

No. 1429

10

IN THE
UNITED STATES CIRCUIT COURT of APPEALS
FOR THE NINTH CIRCUIT.

S. R. PRICE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the United States Court for China.

TRANSCRIPT OF RECORD.

Upon Return to Mandate of the United States Circuit
Court of Appeals for the Ninth Circuit.

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*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

In the Matter of S. R. PRICE, on Habeas Corpus.

**Petition for Writ of Habeas Corpus, for Admission
to Bail and for Mandate.**

To the Honorable Judges of the United States Circuit Court of Appeals, for the Ninth Circuit:

The petition of Lorrin Andrews respectfully shows:

That he is an attorney and counselor at law, duly admitted to practice in the United States Supreme Court, in the Supreme Court of the State of New York, in the Supreme Court of the Territory of Hawaii, in the United States District Court of Hawaii, and in the United States Consular Court at Shanghai, and is in good standing in all of said courts;

That for more than one year last past your petitioner has been practicing law in the United States Consular Court at Shanghai, and is a member in good standing at said court;

That in July, 1906, S. R. Price, a citizen of the United States of America, was charged with the crime of an assault with a deadly weapon before the United States Consular Court, and on said charge

the said S. R. Price was committed to the United States Court for China for trial;

That in the proceedings before said Consular Court your petitioner and his associate, F. M. Brooks, represented and appeared for said Price;

That on or about the 18th day of December, 1906, and subsequent to the transfer of said cause to the United States Court for China, Honorable L. R. Wilfley, the Judge of said Court, arrived in Shanghai and assumed the duties of his office;

That immediately thereafter said United States Court for China was convened and the Judge of said Court announced that all attorneys of the United States desiring to practice in his court and before being permitted so to do, must, within one week from said date, pass a written examination to be prepared by said Judge, on all the various subjects comprised in the study of the law, among others, Equity, Evidence, Criminal Law, Pleading, International Law, Real Property, Contracts and Torts;

That said Judge declined to allow any of the members of the Bar of the United States any further time for study and preparation, and refused to accept from your petitioner his diplomas and licenses of the Courts hereinbefore mentioned; the said Judge further refused to allow your petitioner's said firm, or any of the said United States Attorneys to finish

any pending cases in which they appeared as attorneys of record;

That thereupon your petitioner, and the other members of the United States Bar, although unprepared, within the time allowed took said examination before said Judge, with the result that with the exception of one firm all of said members of the Bar were refused admission to practice in said Court;

Simultaneously with the order requiring the members of the United States Bar to qualify themselves by examination, the said Judge announced that all foreign members of the Bar should be admitted without examination; the said Judge further informed your petitioner that if he appeared in the defense of said Price he would deem it an infringement of the rules of his Court and intimated that he would hold your petitioner guilty of contempt of court; the said Judge also informed your petitioner that he should not appear in court in an advisory capacity or otherwise, whilst the trial of said Price was in progress;

That thereafter your petitioner retained the services of one G. D. Musso, an Italian Barrister, to appear at the trial of said Price before said United States Court; that with but little time for preparation the said Musso entered upon the defense of said Price before said court sitting without a jury;

That on the 15th day of January, 1907, the said Price was adjudged guilty by said Judge Wilfley;

That thereafter, on the 18th day of January, 1907, the said Price was sentenced to a term of imprisonment for six months in the Shanghai Consular Jail at Shanghai;

That subsequently, and on the 18th day of January, 1907, the said Price feeling himself aggrieved and being desirous of taking an appeal from said judgment to this Court, filed a notice of appeal from said judgment, and also asked for an allowance of said appeal, and further asked that bail be fixed on said appeal;

That on said 18th day of January, 1907, the said Price also tendered an assignment of errors, and did offer to comply with any and all rules and regulations governing appeals to this Court;

That on said 18th day of January, 1907, or thereabouts, and within the time allowed by law, an appeal was allowed by said United States Judge and the proper papers and documents in said appeal duly filed with the clerk of said court;

That the said Price, through his said counsel, has frequently applied to the said court for authenticated copies of all the proceedings, papers and documents in said cause, including the papers on appeal, and has frequently requested said Judge, and the Clerk of said Court, to certify and transmit the pro-

ceedings, papers and documents relative to said appeal to this Court;

That the said Judge, and the Clerk of said Court, have failed and neglected to transmit the same, or any of them; and for that reason the said Price is unable to docket his appeal in this Court;

That the said Price, after his conviction upon said charge and after notice of his appeal, offered to give bail in any sum up to \$10,000.00 gold, but the said Judge declined to receive bail in any sum, stating that his judgment, if wrong, could be corrected by this Court, but that no bail would be allowed;

That the jail in which said Price is confined is unsanitary and unfit for human beings, and the health of said Price is in the opinion of your petitioner, being greatly undermined by reason of said detention;

That the said Price is now in actual confinement and detained in said jail, and is in the custody of the United States Marshal at Shanghai, by virtue of a commitment issued by said United States Court for China under said judgment;

That the said Price intends in good faith to prosecute his said appeal to this Court, but cannot do so without there be transmitted to this Honorable Court a full, true and complete transcript of all the records and proceedings in this cause;

That the said Price is liable to give good and sufficient bail for his appearance in whatever Court his case or trial may be prosecuted.

Wherefore, your petitioner prays that a writ of habeas corpus may be granted and the said Price brought before the said United States Judge at Shanghai, and that he then and there be ordered and directed to admit said Price to bail in such sum as to your Honors may seem meet and proper, and that the United States Marshal at said Shanghai be directed to take said Price before said United States Court at Shanghai for the purpose of giving bail; and further, that the said United States Court at Shanghai, and the Judge of said Court, and the clerk thereof, be directed forthwith to transmit to this Court a full, true and complete transcript of the records and proceedings in said cause, and your petitioner prays that such other and further orders be made in the premises as may seem meet and proper.

LORRIN ANDREWS,

Petitioner.

BERT SCHLESINGER,

S. C. WRIGHT,

Attorneys for Petitioner.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Lorrin Andrews, the above-named petitioner, being duly sworn, on his oath says that the facts set forth in the above petition are true.

LORRIN ANDREWS,

Subscribed and sworn to before me, this 12th day of February, 1907.

[Seal] . MARTIN ARONSOHN,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: No. 1429. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of S. R. Price, on Habeas Corpus. Petition for Writ of Habeas Corpus, for Admission to Bail; and for Mandate. Filed Feb. 13, 1907. F. D. Monckton, Clerk. Bert Schlesinger, Attorney at Law, United States National Bank Building, S. E. Corner Fillmore and Bush Sts., San Francisco, California.

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

No. 1429.

In the Matter of S. R. PRICE, on Habeas Corpus.

**Affidavit of Bert Schlesinger in re Petition for Writ
of Habeas Corpus, etc.**

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Bert Schlesinger, being duly sworn, makes oath:

That he is by profession an attorney at law, and is a member of the bar of the above-named court.

That on or about the 1st day of February, 1907, affiant was retained by the law firm of Brooks & Andrews, of Shanghai, China, to appear in the above-entitled court on behalf of one S. R. Price, who, on or about the 15th day of January, 1907, was convicted in the United States Court for China, sitting at Shanghai, of the crime of assault with a deadly weapon, for the purpose of getting the said Price admitted to bail, and generally to represent the said Price in the matter of his appeal from the judgment of said United States Court for China, sitting at Shanghai, to this Court.

That affiant was informed by Lorrin Andrews one of the attorneys for the said Price, who arrived in the city and county of San Francisco from China per the steamship "Siberia" on the 11th day of February, 1907, that an appeal had been perfected from the judgment of conviction rendered by said United States Court for China, as aforesaid, to the United States Circuit Court of Appeals for the Ninth Circuit; that after said appeal had been allowed the attorneys for said Price, to wit: F. M. Brooks, Lorrin Andrews and G. D. Musson requested the said United States Court for China, sitting at Shanghai, and the clerk thereof, to certify and transmit to the United States Circuit Court of Appeals for the Ninth Circuit, a true and correct copy of all the papers, proceedings and record in the case of the United States of America vs. S. R. Price; that affiant was informed by the said Andrews that the Court and the clerk thereof refused to do so.

That on the 11th day of February, 1907, affiant sent the following cablegram to the said F. M. Brooks at Shanghai, China, one of the attorneys for said Price, viz.:

"San Francisco, Cal., February 11, 1907.
Brooks, Shanghai.

Will clerk or court wire court here appeal been allowed.

(signed) SCHLESINGER."

That to said cablegram affiant on received the following answer, which is hereto annexed and made a part of this affidavit marked Exhibit "A," viz.:

Shanghai, Feb. 13, 1907.

Schlesinger (2195 Bush St.), San Fran.

Appeal allowed perfected court and clerk arbitrarily refuse send cable answer.

(Signed) BROOK."

That on the 8th day of February, 1907, affiant received the following cablegram from F. M. Brooks at Shanghai, China, viz.:

"Shanghai, Feb. 8, 1907.

Schlesinger (for Bert Schlesinger, 2059 Bush St.),
San Fran.

Meet Andrews has copy record steamer Siberia."

That said cablegram is hereunto annexed, marked Exhibit "B," and made a part of this affidavit.

That affiant was informed by Lorrin Andrews and verily believes that the firm of Brooks & Andrews have been retained and are authorized to represent the said S. R. Price before this Honorable Court, and that the said Lorrin Andrews was and is authorized to file any and all petitions for writs of habeas corpus, or otherwise, on behalf of the said Price, as in his judgment he deems necessary and proper.

That affiant and S. C. Wright have been authorized by the attorneys for the said S. R. Price to act for them in this court on behalf of the said S. R. Price.

BERT SCHLESINGER.

Subscribed and sworn to before me the 20th day of February, 1907.

[Seal] JOHN FOUGA,
Deputy Clerk U. S. District Court, Northern District
of California.

Exhibit "A."

[Written on Blank of Postal Telegraph Cable
Company.]

57 Sf. V. 14 9:22 A. M.

Shanghai, Feb. 13, 1907.

Schlesinger (2195 Bush St.), San Fran.

Appeal allowed perfected court and clerk arbitrarily refused send cable answer.

BROOK.

Immediate answer required.

Exhibit "B."

[Written on Blank of Postal Telegraph Cable
Company.]

Sf. V. 9 Via. Pac. 10 A. M.

Shanghai, Feb. 8, 1907.

Schlessinger (For Bert Schlessinger, 2059 Bush St.),
San Fran.

Meet Andrews has copy record steamer Siberia.

[Endorsed]: No. 1429. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of S. R. Price on Habeas Corpus. Affidavit

of Bert Schlesinger in re Petition for Writ of Habeas Corpus, etc. Filed Feb. 20, 1907. F. D. Monckton, Clerk. Bert Schlesinger, Attorney at Law, United States National Bank Building, N. E. Corner Fillmore and Bush Sts., San Francisco, California.

At a stated term, to wit, the October term A. D. 1906 of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom in the city and county of San Francisco, on Monday the eighteenth day of February, in the year of our Lord one thousand nine hundred and seven. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, District Judge.

No. 1429.

In the Matter of the Application on Behalf of S. R. PRICE for a Writ of Habeas Corpus, for Admission to Bail, and for Mandate.

Order of Submission of Petition for Writ of Habeas Corpus, etc.

Ordered, petition on behalf of S. R. Price for a writ of habeas corpus, for admission to bail, and for mandate in the above-entitled matter, argued by Mr. S. C. Wright, counsel for the petitioner, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October term A. D. 1906 of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom in the city and county of San Francisco, on Thursday the twenty-first day of February, in the year of our Lord one thousand nine hundred and seven. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, District Judge.

No. 1429.

In the Matter of the Application on Behalf of S. R. PRICE for a Writ of Habeas Corpus, for Admission to Bail, and for Mandate.

Order Admitting S. R. Price to Bail and Directing Mandate to Issue.

On reading the petitions and affidavits of Lorrin Andrews and Bert Schlesinger, herein filed, it appearing therefrom that on or about January 15th, 1907, the said S. R. Price was convicted in the United States Court for China, sitting at Shanghai of the crime of assault with a deadly weapon, upon which conviction he was sentenced to imprisonment for a period of six months, and that thereafter, on or before February 11, 1907, he gave notice of his appeal to this Court from said judgment of said United

States Court for China, sitting at Shanghai, which appeal was allowed by that Court, and that the Clerk of said United States Court for China refused and still refuses to furnish or to certify or transmit to this Court a transcript of the papers, proceedings and records in the said cause; and it appearing further that the Judge of the said United States Court for China has refused and still refuses to admit the said S. R. Price to bail pending such appeal;

It is therefore ordered that, pending said appeal, the said S. R. Price be admitted to bail upon his entering into bond with good and sufficient sureties, to be approved by said United States Court for China, in the sum of four thousand dollars conditioned that he make his appearance in the Court below, there to answer to the judgment of that Court after the determination of his appeal to this Court.

It is further ordered that the mandate of this Court issue to the clerk of said United States Court for China directing him forthwith to cause to be made and transmitted to this Court a duly certified transcript of the papers, proceedings, journal entries and records in said cause of the United States of America vs. S. R. Price, upon payment to him of the proper costs for making and so certifying the same.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. 1429.

In the Matter of the Application on Behalf of S. R.
PRICE, for a Writ of Habeas Corpus, for Ad-
mission to Bail, and for Mandate.

Mandate of U. S. Circuit Court of Appeals.

The President of the United States of America, to
the Clerk of the United States Court for China,
Greeting:

Pursuant to an order of this the United States
Circuit Court of Appeals for the Ninth Circuit, this
day entered in the above-entitled matter (a certified
copy of which order is hereto annexed and made a
part hereof),

You, the said clerk are hereby directed forthwith
to cause to be made and transmitted to this Court
a duly certified transcript of the papers, proceedings,
journal entries and records in the cause entitled in
said United States Court for China, United States
of America vs. S. R. Price, upon payment to you of
the proper costs for making and so certifying the
same.

Witness, the Honorable MELVILLE W. FUL-
LER, Chief Justice of the United States, the 21st day

of February in the year of our Lord one thousand nine hundred and seven.

[Seal] (Signed) F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

[Endorsed]: No. 1429. United States Circuit Court of Appeals for the Ninth Circuit. Copy of Mandate. Filed Feb. 21, 1907. F. D. Monckton, Clerk.

Papers from Consular Court.

The nine following papers were certified from the United States Consular Court Shanghai, China, by James L. Rodgers Consul-General as being the originals or true copies and of the whole of the records:

I.

Enclosure No. 3 in letter No. 1614 to Clerk of United States Court for China.

UNITED STATES

vs.

S. R. PRICE.

Docket Record in Consular Court.

Charge with carrying concealed weapons and threatening to kill.

July 25, 1906—Case Docketed. Complainants of A. Jovanssen, John Gibson and J. E. Farrell filed. Defendant waived examination and was bound over to United States Court. Bond in the sum of \$2,500.00 entered, with F. M. Brooks and C. S. Virgil as sureties. Defendant released.

[Endorsed]: Copy of Docket Record. (Signed) F. E. Hinckley, Clerk of the United States Court for China. Dec. 28, 1906. Paper No. 1 a.

II.

*In the United States Court for the Consular District
of Shanghai, China.*

July 25th 1906.

THE UNITED STATES.

versus

S. R. PRICE.

Complaint of A. Jovansen in Consular Court.

I, Adolf Jovansen, Danish subject, manager of the St. George Hotel Co., Shanghai, depose as follows, that is to say: That on the 24th July, 1906, at about 5:15 P. M., one S. R. Price, an American citizen, residing at Shanghai, did unlawfully and feloniously threaten to shoot me by pointing a pistol or revolver at me at the St. George Hotel, No. 205 Bubbling

Well Road, Shanghai, contrary to the law in such case made and provided.

.(Signed) A. JOVANSEN.

Sworn and subscribed to before me this 25th day of July, 1906.

JAS L. RODGERS,
Consul-General of the United States of America,
Acting Judicially.

[Endorsed]: Complaint of A. Jovansen. Filed at 3 P. M., July 25th, 1906, in the U. S. Consulate. F. E. Hinckley, Clerk of the United States Court for China. December 28, 1906. Original Paper No. 1b.

III.

*In the United States Court for the Consular District
of Shanghai, China.*

July 25th, 1906.

THE UNITED STATES

versus

S. R. PRICE.

Complaint of John Gibson in Consular Court.

I, John Gibson, a British subject, Inspector in the Municipal Council Police at Shanghai, in charge of the Bubbling Well Road Police Station, depose as follows, that is to say: That one, S. R. Price, an American citizen, residing at Shanghai, was carrying two revolvers within the limits the International set-

tlement, to wit, at or near the St. George Hotel, No. 205 Bubbling Well Road, on the 24th July, 1906, at or about 5:15 P. M., in contravention of By-Law XXXVII for the Foreign Settlements at Shanghai.

(Signed) J. GIBSON.

Sworn and subscribed to before me this 25th day of July, 1906.

(Signed) JAS. L. RODGERS,

Consul-General of the United States of America.

[Endorsed]: Complaint of John Gibson. Filed at 3 P. M. July 25th, 1906, in the U. S. Consulate. F. E. Hinekley, Clerk of the United States Court for China. December 28, 1906. Original Paper No. 1 c.

IV.

In the United States Court for the Consular District of Shanghai, China.

July 25th, 1906.

THE UNITED STATES

versus

S. R. PRICE.

Complaint of J. E. Farrell in Consular Court.

I, J. E. Farrell, American citizen, manager of the St. George Hotel bar, Shanghai, depose as follows, that is to say: That on the 24th July, 1906, at about 5:16 P. M., one S. R. Price, an American citizen, re-

siding at Shanghai, did unlawfully and feloniously threaten to shoot me by pointing a pistol or revolver at me at the St. George Hotel, No. 205 Bubbling Well Road, Shanghai, contrary to the law in such case made and provided.

(Signed) J. E. FARRELL.

Sworn and subscribed to before me this 25th day of July, 1906.

(Signed) JAS. L. RODGERS,
Consul-General of the United States of America.

[Endorsed]: Complaint of J. E. Farrell. Filed at 3 P. M., July 25th, 1906, in the U. S. Consulate. F. E. Hinckey, Clerk of the United States Court for China. December 28, 1906. Original Paper No. 1 d.

V.

*In the United States Court for the Consular District
of Shanghai, China.*

July 25th, 1906.

THE UNITED STATES

versus

S. R. PRICE.

Warrant for Arrest of S. R. Price in Consular Court.

To W. P. Boyd, Vice-Consul-General.

You are hereby commanded to bring before me the body of S. R. Price, if found within this Consular

jurisdiction, to answer upon a charge of carrying concealed weapons and threatening to shoot and kill.

(Signed) JAS. L. RODGERS,
United States Consul General Acting Judicially.

[Endorsed]: Warrant to Arrest. F. E. Hinckley,
Clerk of the United States Court for China. Decem-
ber 28, 1906. Original Paper No. 1 e.

VI.

*In the United States Court for the Consular District
of Shanghai, China.*

July 25th, 1906.

THE UNITED STATES

versus

S. R. PRICE,
Defendant.

Order Setting Cause for Hearing in Consular Court.

In the above cause it is hereby ordered that the 25th day of July, 1906, at 3 o'clock P. M., be appointed for hearing.

(Signed) JAS. L. RODGERS,
Consul-General Acting Judicially.

[Endorsed]: Ordered for Hearing. Filed July 25th, 1906. Jas. L. Rodgers, Consul-General. Served by Copy, Vice-Consul-General. F. E. Hinckley, Clerk of the United States Court for

China. December 28, 1906. Original Paper No. 1 f.

VII.

**Letter of Andrews & Brooks, Attorneys, to American
Consul-General.**

Shanghai, July 25th, 1906.

Hon. James L. Rodgers, American Consul-General.

Sir: We have been investigating as best as we can and we learn that there were quite a number of witnesses to this transaction, but we are unable to learn their names or present whereabouts. You will readily understand that this matter taking place in a public buffet, it is difficult to know just who were present. We would, however, ask you to issue subpoenas for G. D. Musso 17 Peking Road, we have telephoned and asked Mr. Musso to appear without subpoena, but he refuses to do so; also, Mr. A. Lamero, who resides at 132 Range Road, also Chow Liu Lou, whose address can be furnished by the No. 1 Boy at St. George's Farm.

Yours very truly,

(Signed) ANDREWS & BROOKS,

[Endorsed]: Letter of Andrews & Brooks, Attorneys. F. E. Hinekley, Clerk of the United States Court for China. December 28, 1906. Original Paper No. 1 g.

VIII.

*In the United States Court for the Consular District
of Shanghai, China.*

Shanghai, July 25th, 1906.

UNITED STATES,

vs.

S. R. PRICE.

Memoranda of Hearing, etc., in Consular Court.

**Carrying Concealed Weapons and Threatening to
Shoot and Kill.**

This cause coming on for hearing, defendant waived examination and was bound over to the United States Court. Bond in the sum of \$2,500, with sufficient sureties having been entered, defendant was released.

(Signed) JAS. L. RODGERS,

American Consul-general Acting Judicially.

[Endorsed]: Entry. F. E. Hincley, Clerk of the United States Court for China. December 28, 1906. Original Paper No. 1 h.

Bail Bond for \$2,500.00.

Know all men by these presents, that we, Stewart R. Price, as principal, and Francis M. Brooks, and C. S. Virgil, as sureties, citizens of the United States

residing in Shanghai, Empire of China, are held and formally bound unto the Honorable James L. Rodgers, United States Counsel General at Shanghai acting Judicially, in the sum of twenty-five hundred dollars to the payment whereof we bind ourselves, our respective heirs' executors, and administrators.

The condition of this obligation is as follows:

Whereas in three cases entitled the U. S. against S. R. Price, wherein the said Price was in the Consular Court of Shanghai on the 25th day of July, 1906, bound over to appear before the United States District Court for China, having waived examination on said charges:

Now therefore said Stewart R. Price principal shall appear at the opening of the first term of the said United States District Court in Shanghai and on all subsequent times thereafter when his presence shall be necessary until the trial of these cases by said United States District Court; then this obligation shall be void, otherwise in full force and effect.

In witness whereof the said Stewart R. Price, the said Francis M. Brooks and the said C. S. Virgil have hereunto set their respective hands and seals this 25th day of July, 1906.

(Signed)

S. R. PRICE,

FRANCIS M. BROOKS,

C. S. VIRGIL.

Witness:

H. S. BOONE.

[Endorsed]: Bail Bond. F. E. Hinckley, Clerk of the United States Court for China. December 28, 1906. Original Paper No. 1 i.

*In the United States Court for China, Shanghai,
China.*

Criminal Action No. 3.

THE UNITED STATES

vs.

S. R. PRICE.

Information.

The undersigned accuses S. R. Price, an American citizen, of the crime of assault committed as follows:

That S. R. Price, an American citizen on the 24th day of July, 1906, in the city of Shanghai, China, with a dangerous weapon, to wit, a 32-calibre automatic Colt's revolver, in and upon one A. Jovansen, did willfully make an assault by pointing the said revolver at the said Jovansen in a threatening manner, and by so pointing the said revolver at the said Jovansen, did then and there put the said Jovansen in great fear of bodily harm; against the peace and contrary to law.

(Signed)

A. BASSETT,
District Attorney.

Subscribed and sworn to before me the 29th day of December, 1906.

(Signed) F. E. HINCKLEY.

Clerk for the United States Court for China

[Endorsed]: Information. Filed December 29, 1906, by Arthur Bassett, U. S. Dist. Attorney. F. E. Hinckley, Clerk U. S. Court for China. Original Paper No. 2.

*In the United States Court for China, Shanghai,
China.*

THE UNITED STATES OF AMERICA

vs.

S. R. PRICE.

Plea in Bar.

And now the said S. R. Price, in his own proper person, cometh into this court, and having heard the said information against him read, saith that the said United States of America ought not further to prosecute the said information against him, the said S. R. Price, and enters a plea of autrefois acquit and that he should not again be put in jeopardy contrary to the provisions of the constitution and laws of the United States.

Further pleading, defendant saith that on the 25th day of July, 1906, he was arraigned in the United States Consular Court of Shanghai before the Hon. J. L. Rodgers, Consul-General acting judicially,

which court is a court of competent jurisdiction, for the trial of offenses, on the following charges:

1. With carrying two revolvers within the limits of the Settlement contrary to Municipal By-Law No. 37, at 5:15 P. M. on July 24th, 1906.

2. With unlawfully threatening to shoot and kill one A. Jovansen within the limits of the premises of the St. George Hotel at the same time and place.

3. With unlawfully threatening to shoot and kill one G. E. Farrel at the same time and place.

That the said Court had jurisdiction of the said charges and the Judge announced at the beginning of said case that he would take final jurisdiction of said charges.

That the trial then proceeded and testimony was given by the prosecution that on the 24th day of July, 1906 at Shanghai, China, defendant assaulted one A. Jovansen by pointing at him an automatic Colt's revolver in a threatening manner, and testimony was also given in support of the other charges.

That at the close of the case for the prosecution, testimony was presented in behalf of the defendant, and at the conclusion of said testimony the Court dismissed all the charges against defendant and discharged defendant therefrom, and at the same time served upon the defendant new charges and issued a new warrant, copies of which charges and warrant are attached hereto and made a part of this plea, and the defendant was immediately arraigned upon said

charges and no plea was entered thereon, but examination was waived and a new bond was entered into for the appearance of this defendant in the United States Court for China.

That the charge on which defendant was first arraigned, tried and acquitted and the information now filed against him in this Court arose identically from the same circumstances and the offense charged is the same.

That defendant further asks that the record of the United States Consular Court in regard to the charges tried on the 25th day of July, 1906, against him as set forth herein, be made a part of this plea.

And all this the said S. R. Price, defendant herein, is ready to verify.

Wherefore the said S. R. Price prays judgment of the said information that the same may be quashed and dismissed.

(Signed)

S. R. PRICE.

Shanghai, China,—ss.

S. R. Price being duly sworn, deposes and says, that he is the defendant in the above-entitled action and makes and subscribes the foregoing plea in bar, and that the same is true in substance and fact.

(Signed)

S. R. PRICE.

Subscribed and sworn to before me this fifth day of
January, A. D. 1907.

(Signed) F. E. HINCKLEY,
Clerk of the United States Court for China.

*In the United States Court for the Consular Dis-
trict of Shanghai, China.*

THE UNITED STATES,

vs.

S. R. PRICE.

Warrant (Copy Attached to Plea in Bar).

To W. P. Boyd, Vice-Consul-General.

You are hereby commanded to bring before me
the body of S. R. Price, if found within this Con-
sular jurisdiction, to answer upon a charge of carry-
ing concealed weapons and threatening to shoot and
kill.

(Signed) JAMES L. RODGERS,
United States Consul-General, Acting Judicially.

Copy.

In the United States Court for the Consular District of Shanghai, China.

THE UNITED STATES.

vs.

S. R. PRICE.

Complaint of Adolf Jovansen (Copy Attached to Plea in Bar).

I, Adolf Jovansen, Danish subject, manager of the St. George Hotel Co., Shanghai depose as follows, that is to say:

That on the 24th July, 1906, at about 5:15 P. M. one S. R. Price, an American citizen residing at Shanghai, did unlawfully and feloniously threaten to shoot me by pointing a pistol or revolver at me at the St. George Hotel, No. 205 Bubbling Well Road, Shanghai, contrary to the law in such case made and provided.

(Signed)

A. JOVANSEN.

Sworn and subscribed, etc., before me this 25th day of July, 1906,

(Signed)

JAS. L. RODGERS.

Counsel-General of the United States of America,
Acting Judicially.

Copy.

In the United States Court for the Consular District of Shanghai, China.

July 25th, 1906.

THE UNITED STATES

vs.

S. R. PRICE.

Complaint of John Gibson (Copy Attached to Plea in Bar).

I, John Gibson, a British subject, Inspector in the Municipal Council Police at Shanghai, in charge of the Bubbling Well Road Police Station, depose as follows, that is to say:

That one S. R. Price, an American Citizen residing at Shanghai, was carrying 2 revolvers within the limits of the International Settlement to wit at or near the St. George Hotel, No. 205 Bubbling Well Road on the 24th July, 1906, at or about 5:15 P. M., in contravention of By-Law XXXVII for the Foreign Settlements at Shanghai.

(Signed)

J. GIBSON.

Sworn and subscribed to before me this 25th day of July, 1906.

(Signed)

JAMES L. RODGERS.

Consul-General of the United States of America,
Acting Judicially.

Copy.

In the United States Court for the Consular District of Shanghai, China.

July 25th, 1906.

THE UNITED STATES.

vs.

S. R. PRICE,

Complaint of J. E. Farrell (Copy Attached to Plea in Bar).

I, J. E. Farrell, American citizen, manager of the St. George Hotel Bar, Shanghai, depose as follows, that is to say:

That on the 24th day of July, 1906, at about 5:15 P. M. one S. R. Price, an American citizen, residing at Shanghai, did unlawfully and feloniously threaten to shoot me, by pointing a pistol or revolver at me at the St. George Hotel, No. 205 Bubbling Well Road, Shanghai, contrary to the law in such case made and provided.

(Signed)

J. E. FARRELL.

Sworn and subscribed to before me this 25th day of July, 1906.

(Signed)

JAS. L. RODGERS.

Consul-General of the United States of America
Acting Judicially.

Copy.

[Endorsed]: Plea in Bar. Filed Jan. 5, 1907.
F. E. Hinckley, Clerk of Court. Original Paper
No. 3.

In the United States Court for China, at Shanghai.
Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE.

Defendant.

Subpoena to F. M. Brooks.

The President of the United States of America, to
F. M. Brooks, 17 Yuen Ming Yuen Road, Greet,
ing:

You are hereby required, that all and singular
business and excuses being set aside, you appear and
attend before the Honorable L. R. Wilfley, Judge of
the United States Court for China, at a session of said
court to be held in the courtroom of said Court at
the American Consulate, 36 Whangpoo Road, Shang-
hai, China, on the eighth day of January, A. D. 1907,
at two o'clock P. M., then and there to testify in the
above-named cause now pending in said Court on
the part of the above-named S. R. Price, defendant.

And for failure to attend as above required, you
will be deemed guilty of contempt of court, and you
will be liable to pay to the party aggrieved all loss
and damage sustained thereby.

Witness, the Honorable L. R. Wilfley, Judge of the United States Court for China, this eighth day of January, 1907.

[L. S.] (Signed) F. E. HINCKLEY.

Clerk of the United States Court for China.
Original Paper No. 4.

Served on the within-named F. M. Brooks at 10:30 o'clock A. M., on the eighth day of January, A. D. 1907.

(Signed) O. R. LEONARD,
United States Marshal.

[Endorsed]: Subpoena, F. M. Brooks. Filed this January 8, 1907. F. E. Hinckley, Clerk of Court.
Original Paper No. 4.

United States Court for China.

Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Order Overruling Plea in Bar.

To plead jeopardy it is necessary for the defendant to show that he has been placed on trial on a valid indictment or information before a court of competent jurisdiction. From the allegation of the plea it is evident that the accused was not placed

on trial on a valid information, since it appears that the information contained three distinct charges; in no one of which was defendant charged with assault. The Consul-General has not jurisdiction of the offense charged in the information on which the accused is now on trial. If he had any jurisdiction at all it was to hold a preliminary examination with view to holding the accused for trial by a higher court. It appears from the allegations of the complaint that the Consul-General exercised only this jurisdiction. The proceedings before him, therefore, cannot be pleaded in bar to this action. (17 American & English Cyclopaedia, 586, and authorities stated.)

The plea in bar is overruled.

(Signed) L. R. WILFLEY,

Judge of the United States Court for China.

Original Paper No. 5.

[Endorsed]: Order Overruling Plea in Bar. Filed this eighth day of January, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 5.

United States Court for China, at Shanghai.

January 14, 1907.

**Request for Subpoena of Foreign Witness, Captain
Frederick Davies.**

No. 63.

To the Honorable Sir H. W. de Sausmarez, Judge, H.
B. M., Supreme Court for China and Corea,
Shanghai, China, Sir:

The Honorable L. R. Wilfley, Judge of the United States Court for China, has the honor to request that the Honorable Sir H. W. de Sausmarez, Judge of H. B. M., Supreme Court for China and Corea at Shanghai, China, will be pleased to order one

Captain Frederick Davies,

Address, Chau Su Ho Gardens, Shanghai, China, reputed to be a British subject, to appear in this court on the fifteenth day of January, 1907, at ten o'clock forenoon, for the purpose of giving his testimony in Criminal Action No. 3, United States of America versus S. R. Price, in which action the said Captain Frederick Davies is cited as a witness by the defendant.

Witness the Honorable L. R. Wilfley, Judge of the United States Court for China, this fourteenth day of January, 1907, at the city of Shanghai, China.

By (Signed) F. E. HINCKLEY,
Clerk of the United States Court for China.

[Endorsed]: Request for Subpoena of Foreign Witness. See I letter copy, page 129.

United States Court for China, at Shanghai.

January 14, 1907.

**Request for Subpoena of Foreign Witness, C. E.
Lauro.
No. 64.**

To the Honorable Achille Riva, Acting Consul-General, Consulate of Italy, 112 Bubbling Well Road, Shanghai, Sir:

The Honorable L. R. Wilfley, Judge of the United States Court for China, has the honor to request that the Honorable Achille Riva, Acting Consul-General, Consulate of Italy at Shanghai, China, will be pleased to order one

C. E. Lauro,

Address, Shanghai, China, reputed to be an Italian subject, to appear in this court on Tuesday, the fifteenth day of January, 1907, at ten o'clock forenoon, for the purpose of giving his testimony in the action United States of America versus S. R. Price, in

which the said C. E. Lauro is desired by the defendant to be cited.

And it is further requested that an interpreter of the Italian and English languages be sent to interpret the testimony of the above-mentioned C. E. Lauro.

Witness the Honorable L. R. Wilfley, Judge of the United States Court for China, this fourteenth day of January, 1908, at the city of Shanghai, China.

By (Signed) F. E. HINCKLEY,

Clerk of the United States Court for China.

[Endorsed]: Request for Subpoena of Foreign Witness. See I letter copy, page 130.

In the United States Court for China, at Shanghai.
Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Subpoena to J. W. Winkelbach.

The President of the United States of America, to
J. W. Winkelbach, 40 Peking Road, Shanghai,
Greeting:

You are hereby required, that all and singular business and excuses being set aside, you appear and

attend before the Honorable L. R. Wilfley, Judge of the United States Court for China, at a session of said Court to be held in the courtroom of said Court at the American Consulate, 36 Whangpoo Road, Shanghai, China, on the fifteenth day of January, A. D. 1907, at ten o'clock A. M., then and there to testify in the above-named cause now pending in said Court on the part of the above-named S. R. Price.

And for failure to attend as above required, you will be deemed guilty of contempt of court, and you will be liable to pay to party aggrieved all loss and damage sustained thereby.

Witness, The Honorable L. R. WILFLEY, Judge of the United States Court for China, this fifteenth day of January, 1907.

[Seal] (Signed) F. E. HINCKLEY,
Clerk of the United States Court for China.

Served on the within named J. W. Winkelbach.

(Signed) O. R. LEONARD,
United States Marshal.

[Endorsed]: Subpoena J. W. Winkelbach. Filed this January 15, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 9.

In the United States Court for China, at Shanghai.

THE UNITED STATES

vs.

S. R. PRICE,

Defendant.

Exception to Order Overruling Plea in Bar.

Now comes the defendant in the above-entitled action through his attorney, G. D. Musso, Esq., and excepts to the order made on the 8th day of January, 1907, by the Judge of this Court overruling the plea in bar filed by defendant herein.

(Signed) G. D. MUSSO,
Attorney for Defendant.

Dated January 8th, 1907.

[Endorsed]: Exception to Order Overruling Plea in Bar. Filed this January 15, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 10.

[Seal]

Affidavit of Anna Stewart.

AMERICAN CONSULAR SERVICE.

United States Consulate-General,
Newchwang, China,—ss.

Anna Stewart, the wife of Robert F. Stewart, of Newchwang, China, being duly sworn according to law, deposes and says that,

During her stay in Shanghai, in July, A. D. 1906, through a mutual friend, she made the acquaintance of S. R. Price, Esq., at the Astor House Hotel; in the afternoon of the 26th day of July A. D. 1906, the said Price drove her out to Siccawei, where he wanted to try some revolvers (2) which he had just purchased; that, after having tried the revolvers in question, they stopped at the St. George's Hotel to have some refreshments; these, however, were refused them, and she was aware that Mr. Jovansen for some reason did not wish to serve them; on her going to him for an explanation, which was unsatisfactory to her, she made the assertion that he would regret his action when her husband came to Shanghai, where she expected him to be in a few days' time; Mr. Jovansen was standing with a bottle in his hand at the time, and after she had spoken to him he dropped the bottle and picked up a knife; not putting a very serious construction on his action, I turned to leave; in the meantime the said Price was coming towards them and this was evidently why Mr. Jovansen had picked up the knife and moved in our direction; that the said Price then drew a revolver (one which we had been trying and knew to be unloaded) and told Mr. Jovansen to drop the knife; Mr. Jovansen with extraordinary rapidity

complied with his (Price's) request, and throwing himself on the floor shouted for assistance.

(Signed) A. STEWART.

Subscribed and sworn to before me this 27th day of December, A. D. 1906.

[Seal] ALBERT W. PONTIUS,
American Vice and Deputy Consul-General.

*The United States Court for China, at Shanghai,
China.*

Criminal Action No. 3.

THE UNITED STATES

vs.

S. R. PRICE.

Stipulation Relative to Affidavit of Mrs. Anna Stewart.

It is hereby stipulated by and between A. Bassett, Esquire, District Attorney, and G. D. Musso, Esquire, attorney for defendant in the above-entitled action, that the affidavit of Mrs. Anna Stewart heretofore taken before the U. S. Consul at Newchwang, China, on the 27th day of December, 1906, may be used in the said trial of said cause without objection, and that the said district attorney hereby waives his right to cross-examine the said witness, and that said testi-

mony may be received by the Court and have the same weight as if the said witness were personally present.

(Signed) A. BASSETT,
District Attorney.

Shanghai, China, this 14th day of January, 1907.

[Endorsed:] Affidavit of Anna Stewart and Stipulation. Filed this January 15, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 11.

In the United States Court for China.

Criminal Action No. 3.

UNITED STATES OF AMERICA

versus

S. R. PRICE.

Bail Bond for \$4,000.00

Know all men by these presents that: Whereas S. R. Price, of the City of Shanghai, China, has been made defendant in a criminal case against him prosecuted by the United States of America in the United States District Court for China; and

Whereas, the Judge of the said United States Court for China, has required, and does require, the said S. R. Price, aforesaid, to appear before him in open session of the above-named Court at ten (10:00 A. M.) ante meridian, on Friday, the 19th January, A. D. 1907, or such other time as the above-named Judge of the United States Court for China may

hereafter designate, to have sentence passed upon him in the above-named case;

Now, therefore, we, the undersigned, F. M. Brooks and B. F. Colvin, both solvent residents of the city of Shanghai, China, within the jurisdiction of the above-named court, jointly and severally bind ourselves, our heirs, assigns and executors, for the sum of four thousand dollars legal money of the United States of America to be paid to the United States of America in case the said S. R. Price should fail or neglect to appear before the above-named court as above set forth, otherwise this covenant to be null and void.

In witness whereof we have hereunto set our hands this 16th day of January, A. D. 1907, at Shanghai, China.

(Signed)	S. R. PRICE.
	F. M. BROOKS.
	B. F. COLVIN.

Witnesses:

(Signed)	O. R. LEONARD.
	F. E. HINCKLEY.

Subscribed and sworn to before me this sixteenth day of January, 1907.

(Signed)	F. E. HINCKLEY,
	Clerk of Court.

United States of America,
United States District Court for China,
In Session at Shanghai, China,—ss.

Personally appeared before me this 16th day of January A. D. 1907, the foregoing bondsmen, F. M. Brooks and B. F. Colvin, and jointly and severally, each one for himself, swore to be the identical persons mentioned in the covenant hereto attached and to be solvent to the amount of four thousand dollars legal money of the United States of America over and above all other obligations or chattels exempted by law.

(Signed) F. E. HINCKLEY,
Clerk of the United States District Court for China.

NOTE: Each of the bondsmen in the foregoing bond, namely, F. M. Brooks and B. F. Colvin, having been asked by the Court whether he was owner in his own right of real property situate within the jurisdiction of this court of value sufficient to cover his obligation under this bond replied in the affirmative, and, therefore, by direction of the Court, took oath before me, F. E. Hinckley, Clerk of the Court, stating under oath that they, and each of them, was owner of real property as stated above of sufficient value to cover their and his obligation under this bond.

(Signed) F. E. HINCKLEY,
Clerk of Court.

Shanghai, January 16, 1907.

[Endorsed]: Bond of F. M. Brooks and B. F. Colvin. Filed this January 16, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 12.

In the United States Court for China.

Term at Shanghai, January, 1907.

Criminal Action No. 3.

UNITED STATES OF AMERICA

v.

S. R. PRICE,

Defendant.

Testimony.

Session held in the American Consulate at Shanghai, China, January 15th, 1907.

Attorneys Appearing:

For the United States of America, A. BASSETT, District Attorney.

For the Defendant, G. D. MUSSO.

S. R. PRICE, the defendant, being called, the Court said:

Mr. Price, have you been arraigned?

A. I think not.

By Mr. MUSSO.—He has not been arraigned:

By the COURT.—Very well.

(Clerk of the Court reads the information filed.)

(Testimony of S. R. Price.)

By the COURT.—Do you plead guilty or not guilty?

A. Not guilty.

By Mr. BASSETT.—Let Mr. Jovansen be sworn.

By Mr. MUSSO.—If your Honor pleases, I move the witnesses be excused from the courtroom, that they be not within hearing of the witnesses giving testimony now; that all other witnesses be put outside of the courtroom.

By Mr. BASSETT.—I have no objection.

By the COURT.—Put them in the other room, Mr. Marshal—the witnesses in this case, except the one testifying, where they cannot hear the testimony.

ADOLPH JOVANSEN, duly called, sworn and examined, testified as follows:

Direct Examination.

(By Mr. BASSETT, District Attorney.)

Q. What is your name?

A. Adolph Jovansen.

Q. Where do you live?

A. St. George's Hotel, 205 Bubbling Well Road.

Q. Is St. George's Hotel in Shanghai?

A. Yes.

Q. Do you know the accused, Mr. Price?

(Testimony of Adolph Jovansen.)

A. Yes.

Q. Do you know his nationality?

A. Yes; American.

Q. What connection have you with the St. George's Hotel?

A. At present I am lessee and manager.

Q. Were you connected with the St. George's Hotel on July 24th, 1906?

A. I had entire charge of the hotel upon that date.

Q. Did you see Mr. Price?

A. Yes, Mr. Price and a lady came in the afternoon about half-past three or four in order to help themselves to refreshments.

By the COURT.—Half-past three or four?

A. Yes.

By Mr. BASSETT.—What happened when he came to the hotel?

A. My number one boy was in charge of the dining-room and said to me, "No good, no can." I said, "What is it?" I had given the boy instructions that no ladies of ill-fame should be served in my place. The boy came from the Astor House and said he knew the lady. I told him to ask Mr. Price to take the lady to another place in the green-house; he said he would not; the boy said, "The manager says, no can." He

(Testimony of Adolph Jovansen.)

insisted on being served and wanted to see the manager. The boy said, "No can; manager no have." The lady came into the bar-room where she had seen me and began to use bad language towards me. I said nothing, but kept quiet. Mr. Price came from the dining-room through the pantry and said, "What is up here?" Mr. Price began to use bad language, called me all kinds of names, insulted me as much as he could. I kept quiet; asked him if she was his wife; he said she was not; I said to take her to his own place, as I wished to keep my place respectable. He kept on insulting me and said, "Will you serve me or not?" He pulled out a revolver; I got frightened; then the lady came and also pulled out a revolver, two against me. So I got hold of the table got my hand on a bottle, dropped the bottle, hiding myself under the table. I screamed for assistance. That is all that happened. The boy went to the police. The boys present will testify to what has happened.

By the COURT.—Did Mr. Price point the revolver at you? A. Straight at my face.

Q. You say the woman had a revolver?

A. Yes.

Q. Did she draw the revolver?

A. Yes; called me names; I thought it was no good defending myself.

(Testimony of Adolph Jovansen.)

Q. Very well.

By Mr. BASSETT.—Where were you when Mr. Price first spoke to you?

A. I was in the pantry.

Q. Is the pantry a room separated by a door from the dining-room where he first proceeded?

A. The dining-room has an open door into the pantry and bar-room to communicate. The lady went around to bar through the door and insulted me. Then Mr. Price came from this door and says, “What is the matter here?” Then he began to insult me. There was nobody present; they were quite alone.

Q. That is all.

Cross-examination.

By Mr. MUSSO.—Now, Mr. Jovansen, you state in your evidence that the number one boy told you “No good, no can.”

A. Yes.

Q. Did you know of your own knowledge whether the lady was not fit to visit your place?

A. No, I did not know; now I know that the lady was respectable; then I did not, for the boy said she was from the Astor House; said “No good, no can.”

Q. You know now that she is a respectable lady?

A. Yes.

Q. Mr. Jovansen, do you mean to say that if to-

(Testimony of Adolph Jovansen.)

morrow a lady unknown to you, on the word of a Chinese boy, you would practically—

By Mr. BASSETT.—I object—

By Mr. MUSSO.—I should like to submit to your Honor, please, what kind of judgment witness used at the time.

By Mr. BASSETT.—You are speculating as to what would be done to-morrow.

By Mr. MUSSO.—Not that, but what kind of judgment witness used as to what kind of people visited his place.

By the COURT.—Whether the woman was respectable or not is not in issue.

By Mr. MUSSO.—But that is the point on which the whole row started; I think it is very material for the defense that it be cleared up. But, of course, if your Honor rules that the evidence is inadmissible on this point, I must bow to your decision and note exception.

By the COURT.—The character of the woman is not in issue.

By Mr. MUSSO.—Now, Mr. Jovansen, you say that the lady came through the bar; is it so?

A. Yes.

(Testimony of Adolph Jovansen.)

Q. Who was present in the pantry where you were when first the lady spoke?

A. My number one pantry boy, and, I think, number one boy also—bar-room boy—and the godown boy; when she came in the beginning to insult me and used bad language.

Q. Now, how long after the lady came to speak with you did Mr. Price come?

A. A few minutes after; she began to speak loud and excited; Mr. Price said, "What is the matter?" Then he began to speak.

Q. Where were you standing when Mr. Price pulled out the revolver?

A. I was standing in the open door.

Q. An open door into the pantry?

A. Yes, quite so.

Q. Of course Mr. Price, when he drew the revolver, was in what is now the dining-room?

A. Looking like this (pointing to the right) in this door—

Q. How far from you?

A. Quite close to me, close as could be.

Q. About where?

A. No less than that (pointing to table about four feet from witness).

Q. Immediately after Mr. Price drew the revolver, you picked up the bottle?

(Testimony of Adolph Jovansen.)

A. No, no; yes, quite right, he stepped back and pulled out the revolver.

Q. He made a step back?

A. I had nothing in my hands and got hold of this bottle and faced around. Then the lady pulled a revolver. Then I dropped the bottle and hid myself; it was too much for me two to one.

Q. You said Mr. Price stepped backwards, pulled the revolver, you got the bottle, the lady came—Where was the lady at the time?

A. She was in the bar-room, with an open door; could see everything around.

Q. Was in the bar-room? A. Yes.

Q. You just testified that while speaking with the lady, Price came, and I take it, you were in the bar-room also?

A. She followed me into the pantry through the open door, just behind—

Q. I want an answer to my question. You have already testified that you were speaking with the lady when Mr. Price came, then you say when Price drew the revolver you were in the dining-room. You were on the door of the pantry at that time and the lady in the bar-room? A. Yes.

Q. If you were speaking with the lady at the time Price came you must have been in the bar-room at the time, not in the pantry?

(Testimony of Adolph Jovansen.)

A. I was at the time in the pantry, then Price came; the lady was then in the bar-room. There is an open door between, so the boys can pass without opening doors.

Q. Who was in the bar-room when you grabbed the bottle?

A. In the bar-room there was number one bar-boy and the godown boy.

Q. Is it not a fact that on the table there there was a carving knife—a big knife, anyhow?

A. There was a bread knife laying on the table for cutting bread and there was an oil bottle.

Q. Did it not occur to you you could make a better defense with a knife than a bottle?

A. Maybe; I did not take it.

Q. Is it not a fact that you have a very delicate and nervous disposition?

A. Yes, especially when a couple of revolvers were in front of me.

Q. Not only then. Is it not a fact that you are very excitable—given to having fits?

A. Yes, at times.

Q. Is it not a fact, Mr. Jovansen, that only the sight of a person who came to ask an explanation may have excited you? A. It is so.

Q. Is it not a fact that going to court makes you excited? A. Yes.

(Testimony of Adolph Jovansen.)

Q. Is it not a fact that on account of your nervous constitution excitement lasts a considerable time?

A. Yes.

Q. Mr. Jovansen, is it not possible, that when you are excited you do things or say things which afterwards you do not or might not remember?

A. Maybe.

Q. Now, Mr. Jovansen, let me put to you a very fair question: is it not possible that in the course of your excitement you did take the knife and afterwards did not remember it; is that possible or not?

A. I do not think so.

Q. Can you positively swear that it is not possible that during the course of your excitement you might do things and afterwards not remember them? You might in the course of your excitement pick up the knife and afterwards not remember it? Can you swear it is not possible?

A. No, I cannot swear.

Q. Now, after Mr. Price pointed the revolver, did he come near you at all?

A. He followed me with the revolver.

Q. When you went under the table, as you say, did Mr. Price take any advantage of your position—did he come near you or give you any blow?

A. I cannot remember now.

(Testimony of Adolph Jovansen.)

Q. Then you admit there are things which might have occurred which you do not remember now; is it not so, Mr. Jovansen? If you do not remember whether a person hurt you or not, you might not remember taking up a knife when the person started towards you? A. I do not think so.

Q. Still, in the evidence given by you in the court below, you stated that Price did not come near you. Do you confirm that statement now?

By the COURT.—Well, one moment, please. This cross-examination is on the case put into this Court. There is no evidence before the Court that you have a record of this testimony in the lower court.

By Mr. MUSSO.—Of course the proceedings in the lower court are in possession of the Consul-General. This evidence during the time, when appealed to you, was argued before your Honor.

By the COURT.—Better ask him.

By Mr. MUSSO.—Mr. Jovansen, did you give evidence before the Consul-General the next day after the occurrence? A. Yes.

Q. Did you state that the accused did not come near you?

A. Yes, he did not come near while I was under the table, but before he followed me with a revolver. I did not see him while under the table.

(Testimony of Adolph Jovansen.)

Q. And Mr. Price was quite sober at the time?

A. Yes, he was sober.

Q. Now, Mr. Jovansen, was anybody standing near when Mr. Price pointed the revolver at you?

A. Nobody.

Q. But there was some one near at the time?

A. No, sir, there was nobody.

Q. Now, did you state in the court below there was half a dozen boys and two foreigners and yourself with the bottle?

A. I do not remember.

Q. You do not remember now whether there were foreigners present or not?

A. No.

Q. Now, Mr. Jovansen, is it not a fact that some days ago you reported to the Bubbling Well Police Station that there was a gentleman in your place who had a bomb, a revolver, a knife, and murderous-looking eyes?

By the COURT.—Repeat the question. Is it a question whether or not it is a fact that witness reported at the Bubbling Well Police Station that in his place there was a man with murderous-looking eyes in possession of a revolver, a bomb and a knife?

By Mr. BASSETT.—I object to that question.

By the COURT.—What point do you want to prove, Mr. Musso?

(Testimony of Adolph Jovansen.)

By Mr. MUSSO.—We want to prove that he was excited at the time; that he saw a bomb, a revolver and a knife that were never in existence; that the police called there and found an innocent gentleman there for pleasure.

By the COURT.—He has admitted he is nervous and excitable.

By Mr. MUSSO.—It would be an instance of nervousness.

By the COURT.—He has already admitted a nervous temperament; furthermore, the evidence is not competent.

By Mr. MUSSO.—I except. That is all, Mr. Jovansen.

Redirect Examination.

By Mr. BASSETT.—Mr. Jovansen, you stated that Mr. Price followed you; did he go into the pantry where you were? A. Yes.

Q. That is, he left the dining-room and came into the pantry? A. Yes.

Q. Did he enter by the door into the pantry?

A. Yes.

Q. Did he draw the revolver before he came into the pantry or while he was still in the dining-room?

A. While standing in the door.

(Testimony of Adolph Jovansen.)

Q. Where was he when he pointed the revolver at you?

A. Standing in the doorway—the middle of the door.

Q. When he pointed the revolver, what did you do?

A. Stepped back. I got frightened and thought “What shall I do?” I held something in my hands. Then the lady came up. When I saw two revolvers, I did not exactly lose my head, I dropped the bottle and hid myself.

Q. Were you frightened?

A. I was very much frightened.

Q. Why were you frightened?

A. Why, with two revolvers pointed against me and no defense.

Q. That is all.

By the COURT.—That is all, Mr. Jovansen.

Mr. YATES WONG, Clerk in American Consulate, Shanghai, China, sworn as interpreter, interpreted the testimony of the following Chinese witnesses:

AH DOW, having affirmed in form of affirmation in the Chinese language as prescribed by the Court, being examined, testified through the interpreter as follows:

Direct Examination.

By Mr. BASSETT.—What is your name?

A. Ah Dow.

Q. What do you do?

A. Boy in bar-room, St. George's Hotel.

By the COURT.—What is his name?

A. Ah Dow.

By Mr. BASSETT.—You work for Mr. Jovansen?

A. Yes.

Q. Do you know Mr. Price, the accused?

A. Yes.

Q. Were you working at the St. George's Hotel during the month of July, 1906? A. Yes.

Q. Did you see the difficulty that occurred there between Mr. Jovansen and Mr. Price?

A. Yes.

Q. State to the Court just what you saw.

A. One day in July there came to St. George's Hotel Mr. Price and another woman who wanted to be served in the dining-room. The number two boy stated to the first boy that this woman was not a decent woman, so he reported to the manager, Mr. Jovansen, and Mr. Jovansen said they could not

(Testimony of Ah Dow.)

drink there but in some other place; not in the dining-room. They had a quarrel and the woman used bad language to Mr. Jovansen. Mr. Jovansen retreated to the bar-room and then to the pantry. The woman came to see Mr. Jovansen again using bad words and Mr. Price went into the pantry and drew out his revolver. Then Mr. Jovansen hid himself under the table.

Q. At the time Mr. Price drew out his revolver, what, if anything, did Mr. Jovansen have in his hand?

A. He had nothing in his hand.

Q. Did Mr. Price point the revolver at Mr. Jovansen?

A. Yes, he pointed it at Mr. Jovansen.

Q. What did Mr. Jovansen do?

A. He shouted for help and then hid himself under the table.

Q. That is all.

Cross-examination.

By Mr. MUSSO.—Now, I think witness was employed formerly in the Astor House Hotel Company?

A. Yes.

Q. I think he was dismissed therefrom for “squeezing?”

By the COURT.—Ask the question direct.

(Testimony of Ah Dow.)

By Mr. MUSSO.—You were dismissed by the Astor House Hotel Company? A. No.

By the COURT.—He says he was not at the Astor House? A. Not dismissed.

By Mr. MUSSO.—Now, you say that number two boy told the number one boy that the woman was “not fit”; did you hear the conversation between the two boys? A. Yes.

Q. I take it the number one boy did not know who the woman was? A. I do not know.

Q. What was the exact conversation between the two boys? What did the number two boy tell the number one boy? Did the number one boy reply anything?

A. Number two boy said to the number one boy that the woman is “not fit”; she seems to be an indecent woman; the number one boy then said “We had better talk about it to the manager.”

Q. Now, did the number one boy report the matter to the manager? A. Yes.

Q. Did you see the boy report the matter?

A. He saw the number one boy report to the manager.

Q. Did you hear what the number one boy said to the manager? A. He did not hear.

Q. Does he speak English?

(Testimony of Ah Dow.)

A. Speaks a little.

Q. When the lady in question went to see Mr. Jovansen, where were you?

A. I was in the bar-room.

Q. Where did this conversation happen between the number one and the number two boy?

A. In the dining-room.

Q. Were you in the dining-room during this conversation? A. I was in the bar-room.

By the COURT.—He was in the bar-room at what time?

A. When the conversation was held between the number one and the number two boy.

By Mr. MUSSO.—Where was Jovansen when the number one boy went to report the matter to him?

A. Mr. Jovansen was in the pantry.

Q. Now, the pantry communicates with the bar-room through an open door, is it not so?

A. Yes, it communicates.

Q. And the door was open? A. Yes.

Q. Is it not a fact that when the number two and the number one boy were speaking together they were standing at the further end of the dining-room; that is, near the entrance?

A. The conversation was held at the window near the bar-room.

(Testimony of Ah Dow.)

Q. When the number one boy went to speak to Jovansen, is it not a fact that Jovansen was standing near the pantry door, that is, quite close to the door of the bar-room? A. Yes.

Q. You overheard the conversation which happened in the dining-room, but you did not hear the conversation between the number one boy and Jovansen which was still closer to you?

A. I did not like to overhear that conversation.

Q. Where was Mr. Jovansen when Price drew the revolver at him? A. In the pantry.

Q. At the door of the pantry or inside of the pantry? A. In the pantry.

Q. He was in the pantry. Now, which place in the pantry; by the table in the middle?

A. By the table.

Q. Where was Price when he drew the revolver?

A. He stood about five feet from the door.

Q. From the door inside the pantry? Inside or outside?

A. From the door, inside the pantry.

Q. Now, did Mr. Price say anything when he pointed the revolver at Jovansen?

A. He did speak to Mr. Jovansen, but I could not understand what he said.

Q. Is it because you do not understand enough English? A. Yes.

(Testimony of Ah Dow.)

Q. You testified that the lady was using bad language. If you do not understand enough English, how do you know she was using bad language? Were you told that by somebody? Did Mr. Jovansen tell you the woman was using bad language?

A. He understands bad language.

Q. Then I take it Price did not use bad language, for if he had used bad language toward Jovansen, he would have understood it because he understands bad language.

A. When Mr. Price pointed at Mr. Jovansen they were so frightened that they did not care to hear what was said.

Q. Ask this witness how he can reconcile the two statements. Which of the two is correct? You just stated to the Court that you did not understand what Price said because you did not know enough English. Now you come with a contradictory statement; say you were frightened; no time to listen; did not care to listen; which of the two statements is correct?

By the COURT.—Ask witness this question: If Mr. Price, when he pointed the revolver at Mr. Jovansen, used any bad language?

A. He did not hear.

(Testimony of Ah Dow.)

By Mr. MUSSO.—Was there a knife, a bread knife or carving knife in the pantry when Price pointed his revolver at Jovansen? A. I did not see.

Q. Did Jovansen grab anything, a bottle or knife or any other weapon when Price pointed the revolver at him? Did he do anything for self-defense?

By the COURT.—Ask one question at a time. Did he take up any knife or weapon?

A. He did not take anything.

By Mr. MUSSO.—And it would be unfair for me to suggest that Jovansen grabbed a bottle in self-defense?

By the COURT.—You have asked him that question; he said he did not pick up a bottle; you can draw any inferences you wish. He stated the fact as he saw it.

By Mr. MUSSO.—You were in such a position you could see everything that happened in that room, were you not?

A. Yes, he was at the door of the pantry.

Q. It would not be possible for Jovansen to pick up a bottle without his noticing it?

A. I did not see him pick up a bottle.

By the COURT.—He has testified to that, Mr. Musso; he has testified that he was there present and that he did not see him.

(Testimony of Ah Dow.)

By Mr. MUSSO.—We will leave that. Now where was the lady when Price drew this revolver?

A. In the bar-room.

Q. What was she doing there?

A. Abusing people.

By the COURT.—What do you mean by people?

A. Abusing the people in the bar-room.

By Mr. MUSSO.—Who were the people in the bar-room? A. All Chinese.

Q. Then I take it that when Price drew the revolver and pointed same at Jovansen the lady made herself abusive to the people in the bar-room?

A. Yes.

Q. Did you see the lady doing anything extraordinary? A. No.

Q. When Price drew this revolver did he make a step backward or make a step forward or stand there? What did he do?

A. He didn't do anything.

Q. He stood still; he did not go near Jovansen at all; is it not so?

A. The first time he drew his revolver the revolver fell on the floor, then he picked it up, took a step or two forward toward Mr. Jovansen.

Q. I see. Then I take it it happened this way. Mr. Price drew the revolver, the revolver fell down;

(Testimony of Ah Dow.)

then Mr. Price picked up the revolver from the floor and made a step forward towards Jovansen. Is that so? A. Yes.

By the COURT.—You state that he pointed the revolver and that the revolver fell to the floor?

A. Yes.

Q. Ask this question. When Mr. Price drew the revolver did he let it drop on the floor?

A. He took it out so sudden that it fell.

Q. From his pocket? A. Yes.

By Mr. BASSETT.—The revolver itself dropped on the floor?

A. The revolver itself dropped on the floor.

By Mr. MUSSO.—Ask the witness whether it is true or not that at the same time the revolver dropped on the floor Mr. Jovansen dropped under the table.

A. He did not hide himself until the second time Mr. Price pointed the revolver.

Q. Now, who else was in the room—in the pantry at the time when Price is alleged to have pointed his revolver; who else besides Price and Jovansen?

A. An old pantry coolie and many others.

Q. Of course the lady was in the bar-room at the time? A. Yes.

(Testimony of Ah Dow.)

Q. Now, Mr. Ah Dow, is it not a fact that this is not the first time you have given evidence for Jovansen in this case? Is it not a fact that you gave evidence for Jovansen in the Astor House case?

By Mr. BASSETT.—I object.

By Mr. MUSSO.—It shows he is a professional witness for Jovansen.

By the COURT.—Not at all—

By Mr. MUSSO.—Your Honor overrules my objection?

By the COURT.—Certainly.

By Mr. MUSSO.—I make exception.

By the COURT.—Note exception.

By Mr. MUSSO.—Did you have any conversation with Mr. Jovansen before coming to Court any time?

A. No.

Redirect Examination.

By Mr. BASSETT.—During the difficulty did you see a bottle in the pantry on the table?

A. Yes.

Q. What happened to that bottle during the difficulty?

A. The bottle was knocked down off the table.

Q. It fell on the floor?

(Testimony of Ah Dow.)

A. It fell on the floor.

Q. When this revolver was drawn there was a great deal of excitement among all the boys--was there not?

A. Yes.

Recross-examination.

By Mr. MUSSO.—I say the statement of witness is not correct. Witness stated they had all run away. I should like, your Honor, to put a question arising out of a question of the Attorney-General. The bottle was knocked off the table?

By the COURT.—I cannot see any point to the question. He has testified on that point fully and clearly, that he did not see Mr. Jovansen pick up the bottle or anything, and that the bottle was knocked over in the excitement.

By Mr. MUSSO.—That is all.

TONG YANG, having affirmed in form of affirmation, in the Chinese language as prescribed by the Court, being examined, testified through the interpreter as follows:

Direct Examination.

By Mr. BASSETT.—What is your name?

A. Yong Yang.

Q. What is your occupation?

A. No. 1 coolie.

(Testimony of Tong Yang.)

Q. Where? A. St. George's Hotel.

Q. You work for Mr. Jovansen?

A. Yes.

Q. Were you working for Mr. Jovansen last July, 1906? A. Yes.

Q. Were you present at the time—do you know Mr. Price, the accused? A. I do not.

By the COURT.—Rise up, Mr. Price.

By Mr. BASSETT.—Did you ever see that gentleman before? A. Yes.

Q. Were you present in St. George's Hotel last July when the difficulty occurred between Mr. Price and Mr. Jovansen?

By Mr. MUSSO.—He has answered that question.

By the COURT.—Never mind—we have an interpreter.

A. Yes, inside.

Q. You state to the Court what happened in that pantry that you yourself saw.

A. He was in the pantry when Mr. Jovansen was called by Mr. Price and Mr. Price drew out his revolver and pointed it at Mr. Jovansen; Mr. Jovansen hid himself under the table and I ran away.
(he)

(Testimony of Tong Yang.)

By Mr. BASSETT.—Where was Mr. Price when he pointed the revolver?

A. Near the door.

Q. How far from the door of the pantry?

A. About eight or nine feet.

Q. Where were you at this time?

A. He stood on the right side of the table.

Q. Where was Mr. Jovansen?

A. Mr. Jovansen hid himself under the table.

Q. I know, but where was he standing before he got under the table?

A. He rushed in from the outside and then hid himself under the table.

Q. At the time Mr. Price pointed the revolver at Mr. Jovansen what, if anything, did he have in his hand—did Mr. Jovansen have in his hand?

A. He did not have anything in his hand.

Q. Was a knife or a bottle or anything on the table in the pantry when Mr. Jovansen came in?

A. There was a bottle on the table but no knife.

By the COURT.—A bottle, but no knife?

A. Yes.

By Mr. BASSETT.—What happened to the bottle during this difficulty?

A. The bottle was knocked down by Mr. Jovansen.

(Testimony of Tong Yang.)

Q. That is all.

Cross-examination.

By Mr. MUSSO.—You say in your evidence that Jovansen rushed in from the outside and hid under the table; now why did Jovansen rush in from the outside, do you know?

A. I do not know, but I was told by other boys that—

By Mr. BASSETT.—That is hearsay; we cannot take that.

By Mr. MUSSO.—Then I take it—from which door did Jovansen rush in?

A. He entered by the door in the bar-room, through the bar-room into the pantry.

Q. I take it Jovansen entered through that door, went straight and hid himself under the table. Is it not so?

A. Yes.

Q. Did Price follow him? A. Yes.

Q. Price was at the back of Jovansen then, was he not?

A. Mr. Price was at the back of Mr. Jovansen.

Q. So Jovansen could not see what Price was doing at the time, if Price was at the back?

A. When Mr. Jovansen arrived at the table he turned himself back.

(Testimony of Tong Yang.)

Q. Oh, I see. But Price pointed the revolver at Jovansen before he arrived at the table; is it not so?

A. When Mr. Price drew out his revolver Mr. Jovansen was already at the table.

Q. Oh, already at the table; but Jovansen rushed in before Price drew the revolver, according to what he said before.

A. The revolver was not taken out before they arrived at the room, at the pantry.

Q. Was taken out? A. Was not.

Q. Then Jovansen rushed in to go to the table before Price drew the revolver, is that so?

A. Mr. Price took out his revolver when he was at the corner of the table.

Q. When Price drew the revolver was Jovansen still with his back towards Price; is it so?

A. They were face to face.

Q. Now, where was the boy called Ah Dow at that time?

A. When the trouble occurred Ah Dow was in the bar-room.

Q. Does the witness know of his own knowledge? Was he in such a place he could see what occurred in the pantry?

A. In his opinion Ah Dow could not see what occurred.

(Testimony of Tong Yang.)

Q. Who were the persons in the pantry at the time of this occurrence?

A. He was the only person present.

Q. Then I take it only three persons present—Price, Jovansen and witness?

A. Only three persons in the room. There were others outside in the bar-room.

Q. Did he see any lady in the bar-room or dining-room who came with Price?

A. He did not see a woman.

Q. Does he speak English?

A. He cannot speak but he can hear what foreigners say a little.

Q. Now, did Price say anything to Jovansen when he pointed the revolver?

A. Yes, but he did not know what Price said.

Q. Is it a fact that when Price drew the revolver the revolver fell down on the floor? A. Yes.

Q. Did you have any conversation with Mr. Jovansen about coming to this Court and giving evidence? A. No.

Q. Who asked you to come to court?

A. He was asked to come by Mr. Jovansen.

Q. When Mr. Jovansen asked you to come did he tell you anything about the object of coming to this court?

(Testimony of Tong Yang.)

By the COURT.—He has testified he was instructed, according to the testimony.

By Mr. MUSSO.—At the second conversation with Mr. Jovansen; should like to know the extent of the second conversation.

By the COURT.—Very well.

A. He was told by Mr. Jovansen that he may be wanted in the Court.

By Mr. MUSSO.—That is all.

CHANG LOUI SUN, having affirmed in form of affirmation in the Chinese language as prescribed by the Court, examined, testified through the interpreter as follows:

Direct Examination.

By Mr. BASSETT.—What is your name?

A. Chang Loui Sun.

Q. What is your occupation?

A. No. 1 boy.

Q. Where? A. With Mr. Jovansen.

Q. Do you work at St. George's Hotel?

A. Yes.

Q. Were you working at St. George's during the month of July, 1906? A. Yes.

Q. Do you know Mr. Price when you see him?

(Testimony of Chang Loui Sun.)

A. Yes.

Q. Do you remember the difficulty that occurred between Mr. Price and Mr. Jovansen at St. George's last July? A. Yes.

Q. Tell the Court just what you saw of that difficulty.

A. Was inside the counter when a lady and Mr. Price entered the bar-room; the lady was using bad language to Mr. Jovansen. Mr. Price went into the pantry after Mr. Jovansen and drew out his revolver which accidentally fell to the floor and which he picked up and pointed same at Mr. Jovansen. Mr. Jovansen was frightened and hid himself under the table and the police came.

By the COURT.—Ask if Mr. Price said anything when he drew the revolver.

A. He said he would shoot him.

Q. You understand some English?

A. Yes.

By Mr. BASSETT.—What, if anything, did Mr. Jovansen have in his hands at the time Mr. Price drew the revolver?

A. He had nothing in his hands.

Q. Did you see a bottle?

A. Yes, it was on the table.

Q. Did you see a knife? A. No.

(Testimony of Chang Loui Sun.)

Q. Did anything happen to this bottle during the difficulty?

A. The bottle was knocked down in the excitement and the contents of the bottle—oil—were poured on Mr. Jovansen's pants.

Q. What did this bottle contain? What kind of oil?

A. A kind of pickle oil.

Q. How large a bottle?

A. A quart bottle.

Q. That is all.

Cross-examination.

By Mr. MUSSO.—Now, Mr. Chang Loui Sun, did you know the lady that came with Mr. Price that afternoon?

A. I did not know the lady.

Q. Had never known the lady before that day?

A. Had never seen her.

Q. Are you aware whether the No. 2 boy knew the lady?

By Mr. BASSETT.—That is not cross-testimony; I have not asked about this.

By the COURT.—Very well; go right on. What is the question?

By Mr. MUSSO.—My question is, are you aware whether the No. 2 boy knew the lady or not?

(Testimony of Chang Loui Sun.)

By Mr. BASSETT.—This boy is the No. 1 bar boy.

By the COURT.—No 1 bar boy?

By Mr. MUSSO.—We have evidence that the No. 1 boy spoke to the No. 2 boy, but no evidence whether the bar boy or the dining room boy—

By the COURT.—Is Ah Dow the No. 1 boy? This is not the No. 1 dining-room boy; I thought this was the No. 1 dining-room boy.

By Mr. MUSSO.—I will withdraw the question for the present. Now you say the lady and Price entered the bar-room; did they enter the room together?

A. The lady came in first.

Q. When Price went to the pantry did he enter the pantry through the bar-room door?

A. Yes.

Q. And not through the dining-room door?

A. Yes.

Q. Where was Jovansen at the time when Price entered the pantry?

A. He was inside the counter of the bar-room.

Q. Witness did not see Jovansen?

A. Did not see him.

Q. Did witness see Price in the pantry?

(Testimony of Chang Loui Sun.)

A. He followed him into the pantry.

Q. What made him follow Price into the pantry?

A. Because Mr. Price used bad words and at the same time he put his hand into his pocket.

Q. Then he saw the gentleman put his hand into his pocket and use bad words?

By the COURT.—Never mind; he has stated the fact and you can make your argument afterwards.

By Mr. MUSSO.—What did he see when he entered the pantry?

A. He saw him take out his revolver.

Q. Where was Price when he took out the revolver? A. He was near the table.

Q. How far is the table from the door which goes into the dining-room? Is it the door that goes from the pantry to the dining-room? A. Yes.

Q. The table at which Price was standing was in the middle of the pantry, was it not?

A. Yes.

Q. And Price was standing near that table; how far from the table? A. Over two feet.

Q. How far was the table from the door that leads to the dining-room?

A. About five feet from the door into the dining-room.

Q. Where was Jovansen?

(Testimony of Chang Loui Sun.)

A. Mr. Jovansen was at the other end of the room.

Q. Did Jovansen do anything when the revolver was pointed at him?

A. Simply shouted for help and hid himself under the table.

Q. You say that Price said, "I will shoot you." Were these the only words Price said, or did he say some words witness did not understand or does not remember?

A. He did not hear any other words Mr. Price spoke.

Q. How many persons were in the room at the very moment that happened?

By Mr. BASSETT.—What room do you mean?

By Mr. MUSSO.—The pantry.

A. Besides Mr. Jovansen and Mr. Price there were six or seven present, who, when Mr. Price took out his revolver escaped to the yard beyond.

By Mr. BASSETT.—Did he say in the pantry or where were they? A. In the pantry.

By Mr. MUSSO.—When Jovansen went under the table to hide himself did any of these Chinese remain in the room?

A. There were three persons including witness.

Q. Who were they?

A. Ah Dow, witness and the other coolie.

(Testimony of Chang Loui Sun.)

Q. What is the name of the other coolie?

A. Yung Foh.

Q. Where was Tong Yang at that time?

A. He ran away from the pantry immediately after Mr. Price took out his revolver.

Q. Before Jovansen went under the table?

A. After.

Q. The lady, according to his statement, was not in the room; where was she?

A. Outside of the bar-room.

Q. Does he mean on the veranda outside the bar-room or in the dining-room?

A. She was in the yard.

Q. What was she doing in the yard, walking, speaking to anybody, drinking?

A. He does not know.

Q. That is all.

JOHN GIBSON, duly called, sworn, examined, testified as follows:

Direct Examination.

By Mr. BASSETT.—What is your name?

A. John Gibson.

Q. What is your occupation?

A. Inspector of police.

Q. What station?

A. Bubbling Well Station.

(Testimony of John Gibson.)

Q. Is this near St. George's Hotel?

A. Yes, over across.

Q. Were you Inspector of Police on 24th July last?

A. Yes.

Q. Do you remember the difficulty between Mr. Jovensen and Mr. Price at St. George's?

A. Yes.

Q. State to the Court just what occurred.

A. At 5:20 P. M. that day I was standing at the door of the Bubbling Well Station and heard screams; proceeded over to St. George's and on my way across to see what was the matter, met one of the boys coming, and he said, "Come quick; someone shoot master." I walked over to the hotel and, when near the gate, I saw Price accompanied by a woman coming out of the hotel; the boy pointed out and said, "That is the man." I followed him up to the corner of Siccawei Road, about 50 yards, caught up with him, caught hold of him, searched his pockets to see if he had a revolver. I found no revolver but found a number of cartridges. While searching him the boy who had called me came up and pointed to the woman; said the woman had taken the revolver. I walked over towards her and she pulled out the revolver and handed it to the boy in my presence. I took possession of the revolver.

By Mr. BASSETT.—Is this the revolver?

(Testimony of John Gibson.)

A. That is the revolver.

By the COURT.—Let me see it.

Q. Well, what happened then?

A. I walked back with Price to the St. George's Hotel and saw Mr. Jovansen. He said he charged Price with pulling a revolver and attempting to shoot him. He seemed rather excited and his clothes—he wore white flannel at the time—were covered by what seemed oil—down below—the pants. I took Price over to the station, charged him, called the carriage which he had been using and brought him to the American Consulate here and handed him over to the custody of the Consulate.

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By Mr. BASSETT.—Did you ever see this revolver before?

A. That revolver was handed me by Sergeant Morey when he got out of the carriage.

Q. That is all.

Cross-examination.

By Mr. MUSSO.—Was the small revolver loaded at the time when you got it?

A. I examined it at the station and it was not loaded.

Q. Jovansen was very excited, was he not?

A. Yes, he seemed rather excited.

(Testimony of John Gibson.)

Q. When you took up the defendant as you say, you went straight with him to the station?

A. Yes.

Q. Jovansen telephoned you, did he not?

A. Yes.

Q. What did you do when you met Price—go to St. George's?

A. Mr. Jovansen was standing at the entrance when I came up with Price.

Q. You just stated to the Court that you went straight to the station.

A. I did not state that.

Q. You deny that you made two statements?

A. I said I went to St. George's on the way to the station.

Q. All right; that is all.

By the COURT.—How many cartridges were found on Mr. Price's person?

A. I do not remember the exact number.

WILLIAM MOREY, duly called, sworn, examined, testified as follows:

Direct Examination.

By Mr. BASSETT.—What is your name?

A. William Morey.

Q. What is your occupation?

(Testimony of William Morey.)

A. Sergeant of Police.

Q. What was your station on 24th July last?

A. Bubbling Well Station.

Q. You remember seeing Price on that day—
Price the accused? A. Yes.

Q. Did you have anything to do with arresting
Price and taking him to the station?

A. The only thing I done I escorted Mr. Price to
the American Consulate.

Q. Did you ever see this revolver?

A. I saw it at the Bubbling Well Police Station.

Q. Are you not the officer who got this revolver
from the carriage?

A. I took one revolver from the carriage outside
the American Consulate; one that looked like that;
I could not swear to it.

Q. You turned it over to the American Consulate?

A. I turned it over.

Cross-examination.

By Mr. MUSSO.—Now, is it not a fact, Mr. Morey,
that it was the defendant who told you there was a re-
volver in the carriage?

A. Mr. Price asked the mafoo where the revolver
was in my presence; I knew the revolver was in the
carriage.

By the COURT.—You saw the revolver?

(Testimony of William Morey.)

A. Yes, your Honor.

Q. You saw this large revolver or one just like it?
A. One like it.

By Mr. MUSSO.—Is it not a fact when you went in the carriage with Price he said, “Sergeant, you will find another revolver under the seat of the carriage”?

A. He did not say it to me; he asked the mafoo if the revolver was there.

Q. Is it not a fact that Jovansen, the complainant in this case, made a charge at your station a few days ago?

By Mr. BASSETT.—I object to that.

By the COURT.—What do you mean to prove by this?

By Mr. MUSSO.—I wish to prove by this that Jovansen made a charge against a man of having a bomb, a revolver and a knife in his possession.

By the COURT.—Ruled out.

By Mr. MUSSO.—I except again.

Q. That is all.

FOH SUN, having affirmed in form of affirmation in the Chinese language as prescribed by the Court, examined, testified through the interpreter as follows:

(Testimony of Foh Sun.)

Direct Examination.

By Mr. BASSETT.—What is your name?

A. Foh Sun.

Q. What is your occupation?

A. St. George's Hotel, No. 1 boy.

By the COURT.—No. 1 dining-room boy?

A. Yes.

By Mr. BASSETT.—Were you working at St. George' last July? A. Yes.

Q. Do you know Mr. Price? A. Yes.

Q. You remember the difficulty between Mr. Price and Mr. Jovansen last July?

A. Yes.

Q. State to the Court just what happened then.

A. Mr. Price came with a lady to the dining-room and asked to be served. Another boy went to see him and asked if these, Mr. Price and the lady, should be served in the dining-room, and he went out to see them and knew the lady who had been a boarder in the Astor House before.

By the COURT.—He knew her?

A. Yes and had not been a proper woman, so he reported the matter to the manager. He went to see Mr. Jovansen and Mr. Jovansen said that they should be served in another place but not in the dining-room,

(Testimony of Foh Sun.)

and when he saw Mr. Price again Mr. Price sent for Mr. Jovansen which Mr. Jovansen refused to go, and waiting for a time a little moment that they had not been served, the lady came to the bar-room giving trouble. Then Mr. Price went to see Mr. Jovansen in the pantry. Mr. Price then reasoned with Mr. Jovansen as to why he and that lady could not be served in the dining-room, and then a quarrel occurred, then Mr. Price took out his revolver and aimed it at Mr. Jovansen and Mr. Jovansen hid himself under the table.

By the COURT.—What did the lady do and say when she came into the bar-room?

A. She said, “Why you not”—

Q. Did she swear?

A. She did not swear.

Q. Did she draw a revolver—the woman?

A. No. He says one of the revolvers was handed to him by the lady outside the hotel.

By Mr. BASSETT.—Was it a revolver like that?

A. Yes.

Q. That is the one? A. Yes.

By the COURT.—Were you in the bar-room when the lady went into the bar-room?

A. The first time the lady went into the bar-room she says, “What for you no give me drink?” I say, “I do not have that.”

(Testimony of Foh Sun.)

Q. You did not see the revolver in the hands of the lady? A. Yes, she gave it to me.

Q. Yes, afterwards; but before?

A. She had it in her pocket.

Q. Could you see it in her pocket?

A. After the lady does this fashion (gestures toward pocket) I says, "Give it to me."

By Mr. BASSETT.—You are the boy who told the police the lady had a revolver?

A. The police were sent for.

Q. Who told the policeman the lady had a revolver?

By Mr. MUSSO.—I object to the question; he does not testify that the policeman was told.

By Mr. BASSETT.—Why did the woman give you the revolver? A. He asked for the revolver.

Q. Who was present when he asked for the revolver? A. One Sikh policeman.

Q. Any other person present when the revolver was given him? A. Some Chinese.

Q. What did he do with the revolver when she gave it to him?

A. I gave it to Inspector of Police.

Q. Was he present when the lady handed the revolver to him?

(Testimony of Foh Sun.)

A. At the time when the lady handed the revolver to him the Inspector of Police had not come.

Q. That is all.

Cross-examination.

By Mr. MUSSO.—When Price went to see Jovansen in the pantry did he enter through the door which leads to the dining-room or to the bar-room?

A. He entered by the door of the bar-room.

Q. Price went to complain to Jovansen that he had not been served, is it not so?

A. Yes.

Q. Is it not a fact that when Price went to speak to Jovansen, Jovansen had in his hand an oil bottle? I will repeat the question. My question is, Is it not a fact that when Price entered the pantry to complain to Jovansen, Jovansen had in his hand already an oil bottle? Is that true or not?

A. He had no bottle in his hand; the bottle was on the table by his side, and when excited at the pointing of Mr. Price's revolver, he knocked the bottle down.

Q. Is it not a fact that there was a knife in the pantry at the time near the oil bottle?

A. Yes, there was a knife.

Q. Now, ask him whether or not it is true that Jovansen picked up that knife.

(Testimony of Foh Sun.)

A. He did not see it.

Q. Who else was present with him in the room at the time? A. Tong Yung.

Q. Who else?

A. There were several coolies.

Q. Does he remember any of them?

A. Ah Sui, Ah Puk, Ah Fuk.

Q. Ask witness whether it is not a fact that when Jovansen hid himself under the table the knife was on the floor near the table.

A. The knife did not drop.

Q. Ask him where the lady was at the time.

A. She was outside.

Q. Is it not a fact that Price told this boy the lady had a revolver; to get the revolver from the lady and hand it to the police; that Price told witness the lady had the revolver, to get the revolver from the lady and hand it to the police?

A. He saw Mr. Price hand the revolver to the lady.

Q. That is not the answer to my question. Ask him whether that is true or not; yes or no?

A. It is true that Mr. Price told me that the revolver had been given to the lady; that he could have it from the lady.

Q. Now ask him when he gave the revolver to the police inspector where was the police inspector?

(Testimony of Foh Sun.)

A. At the gate of St. George's second bar-room.

Q. When Price pointed the revolver at Jovansen, the revolver did not fall, did it?

A. Yes, it fell.

Q. Now, it fell after Jovansen was under the table or before?

A. Before Mr. Jovansen hid himself under the table.

Q. That is all.

By the COURT.—The Court will take a recess until half-past two this afternoon.

After recess, resuming at 2:30 P. M.

By Mr. MUSSO.—May it please your Honor, it was my opinion, in the face of the most conflicting evidence given by the prosecution, to move for a dismissal of the charge on the ground that defendant was quite justified in law to do what he did. But at defendant's special request I will proceed with the case and will not outline the evidence which will lay before your Court. I hope to be able to prove by the evidence to come forward that defendant, who had just received some revolvers, went outside the limits of the settlement to try them, and on his way back called at St. George's Hotel for refreshments; that when he entered the place the boy refused to serve him; that the lady with him—a respectable British

(Testimony of Foh Sun.)

lady—went in to complain to Jovansen; that when defendant himself joined the lady to speak to Jovansen, Jovansen, who had during the conversation a bottle in his hand, grabbed a knife and made a step towards defendant, who in self-defense drew a revolver and asked Jovansen to drop the knife.

I will also show to your Honor that the complainant Jovansen himself, has admitted to many reliable witnesses that he had a knife; that he did use a knife to threaten defendant; and that it was only after using the knife that the revolver was pointed at him. I will further prove by eye witnesses that this was the case absolutely.

I will now call defendant himself to give evidence, Mr. S. R. Price.

STUART R. PRICE, the defendant, duly called, sworn, examined, testified as follows:

Direct Examination.

By Mr. MUSSO.—What is your name?

A. Stuart R. Price.

Q. You are an American, are you not?

A. Yes.

Q. Now, do you remember what you did in the afternoon of 24th July last?

A. Up till I left the Astor House in company with a lady whom I met there, and to try some new revol-

(Testimony of Stuart R. Price.)

vers I had just received, I went from the Astor House out near the convent at Siccawei and fired the revolvers a great number of times.

Q. How many revolvers did you take with you?

A. Two.

Q. In order to try them you took along cartridges?

A. Yes; possibly two hundred, more or less.

Q. After you fired the revolvers what happened?

A. I fired a number of times out near the convent, then went to French Siccawei and fired them some more, then we turned to town by way of the Avenue Paul Brunat. When we reached St. George's Farm—in the meantime put one revolver, the large one, under the seat of the carriage, the other one in my pocket—both revolvers had been fired and were empty.

Q. After using the revolvers did you satisfy yourself whether they were loaded or unloaded?

A. They were empty. We went to St. George's, went in and sat down at a table and called for refreshments—lemonade. The boy stood there a moment and I got up and asked one of the boys what was the matter. He said they could not serve us. I asked why. He said the master said could not serve us. I asked, "Where is master?" and he pointed back. I told him to ask his master to come to me. He did not

(Testimony of Stuart R. Price.)

come and I went back and found Jovansen. I found Jovansen very much excited and asked what was the matter, what he meant by not serving us, etc. He then said some insulting things in regard to the lady with me, said he would not serve us, etc.

Q. Did you use any bad language?

A. At first I said, "Jovansen, what is the matter with you? You seem to be crazy." I told him he was absolutely wrong. He persisted in being impudent and forward and so I told him, "Jovansen, if it was not for making a scandal I would punch the top of your head off," or words to that effect. Jovansen, when I first spoke to him, made insulting remarks in regard to the lady. I told him he was crazy; I knew him before, and did not want a big scene. He was very much excited at the time and I said, "Jovansen, if it were not for making a scandal I would punch the top of your head off," or words to that effect. Jovansen said, "I beg your pardon, now, sir; it is all right." I went and sat down and waited a while and we were not served, and I said to the lady, "It is very slow; we had better go." She had understood or heard what was the matter and she hurried to the back part of the building on the other side. I followed her and found her in the pantry talking to Jovansen; she was telling Jovansen he had treated her shamefully; that she had never been

(Testimony of Stuart R. Price.)

treated that way before in her life and asking why he had done so. I went in and when she had finished her conversation Jovansen was standing with a bottle in his hand listening to what the lady had to say; when she finished Jovansen said, "Go to hell and get out of here." As he said that I walked toward Jovansen; she turned to me; Jovansen dropped the bottle and grabbed a knife, starting towards me. As he drew the knife I drew a revolver and said, "Drop the knife." He immediately dropped the knife, fell on his stomach, making a great noise and outcry.

Q. Mr. Price, you spoke of the back part of the building; did you say the lady went to the back part of the building?

A. It was toward the rear of the building.

Q. Was that the bar-room?

A. How she arrived in the pantry I do not know; I passed through a bar-room; I am not familiar with St. George's Farm; was never in the back part before, and do not know how she entered this portion.

Q. Now, Mr. Price, you said you heard part of the conversation between the lady and Mr. Jovansen; did you hear the lady swearing or using any words a lady should not use?

A. None whatever; she was simply remonstrating when Jovansen said, "Go to hell and get out." She

(Testimony of Stuart R. Price.)

said her husband would come and attend to him and turned and left.

Q. How far were you standing from Jovansen when you pointed the revolver at him and asked him to drop the knife?

A. When I pointed the revolver I was standing, I should say, probably two or three feet away from Jovansen.

Q. After Jovansen dropped the knife did you go near him?

A. I did not advance any further; I stood there.

Q. Where was the lady when you pointed the revolver?

A. When I pointed the revolver the lady had finished her conversation with Jovansen and turned to leave; I think she went right straight on out the door.

Q. When Jovansen picked up this knife did he make any move towards you?

A. He made a step forward.

Q. Were you then in fear for yourself?

A. Well, naturally, I had to take care of myself.

Q. Now, it is alleged, Mr. Price, by Mr. Jovansen, that you told him when pointing the revolver, "Will you serve me?" and it is alleged by another witness that you said, "I will shoot you." Now what did you actually say; did you say anything of the kind?

(Testimony of Stuart R. Price.)

A. The only remark I made in the pantry was, "Drop that knife."

Q. It is alleged by Jovansen, also contradicted by his witnesses, that the woman also pointed a revolver at him. Did you see the lady with a revolver at St. George's?

A. The lady had no revolver; there were only two revolvers and the other was in the carriage; the only time the lady had a revolver was after I had gotten outside the gate of the hotel. She came and said, "Let me have that revolver." I said, "Very well; take it; it is not loaded, anyhow."

Q. You identify the revolvers as belonging to you?

A. They look very much like them; I think so.

Q. Which of the two did you have in your hands?

A. The smaller one.

Q. What happened after Jovansen went under the table, screaming for assistance?

A. I stood where I was for a second then I went outdoors towards the gate; they had the gate closed but opened it; the lady was preceding me as I went out.

Q. Did the police come for you?

A. Yes, the police were on their way when I had gotten out of the gate. I saw them coming and told the lady to go home. She had the pistol, and when

(Testimony of Stuart R. Price.)

they came up to me and took hold of my pocket I said, "The lady has the pistol." There was a China boy there and I called him to me and she gave the pistol to the China boy, and the boy gave it to a member of the police.

Q. How did the police get possession of the second revolver?

A. When I mentioned the fact at the station that there was another revolver, and when a member of the police I came with to the American Consulate—when we reached the carriage—why I mentioned it and I think the mafoo gave it to him; anyhow it was under the seat when I left.

Q. You say when you first spoke to Jovansen when he refused to serve you, he was very excited? When you went into the room and the lady was speaking with him, was he still excited?

A. Yes, very.

Q. You say he had a bottle in his hand; did he make any suspicious motion?

A. He was first standing with his hand on the bottle on the table; as I came in afterwards he stood straight up with the bottle in his hand; he did not make any motion forward with the bottle.

Q. That is all, your Honor.

(Testimony of Stuart R. Price.)

Cross-examination.

By Mr. BASSETT.—He made no threat with that bottle?

A. With the bottle he was merely standing there. The lady was facing him; she was talking to him and he had the bottle in his hand.

Q. Do you know whether the bottle had a cork in it? Was the neck upright? If the bottle had had anything in it would the contents have run out?

A. I think not.

Q. You stated, I believe, that when you came in the lady turned and left?

A. When I came in the lady was still talking to Jovansen and said she had been treated shamefully, and asked why he had done it, or words to that effect.

Q. Did she leave the pantry before the revolver was drawn?

A. I did not look around, only she must have left because she returned while Jovansen was on the floor; came in from the outside, so she must have left.

Q. What was said by either you or Jovansen that showed that there was going to be trouble between you, which made you take out the revolver or made Jovansen take out the knife?

A. Jovansen had told the lady to go to hell and get out of there, and I walked towards him; as I

(Testimony of Stuart R. Price.)

walked Jovansen dropped the bottle and grabbed the knife.

Q. At the time you were walking toward him did you say anything? Were you walking in a threatening manner?

A. I was simply advancing towards him.

Q. It was before this you told him if it were not for creating a scandal you would punch his head?

A. It was before this I said if he would not serve me I would punch his head.

Q. After the first conversation you went back into the dining-room?

A. The first conversation was not in the pantry; it was back from the tables.

Q. In the dining-room? A. Back.

Q. The same room where the tables were where you were sitting?

A. Not in the pantry; back in the room.

Q. Why did the lady ask you for the revolver?

A. On the outside I still had the revolver in my hand; there was a crowd of Chinese on the outside so I told her to go to the Astor House as I knew I would have to go to the police station; I did not have any idea that Jovansen would make any charge; she was in advance; she said, "Give me the revolver." So I gave it to her.

(Testimony of Stuart R. Price.)

Q. When you took the revolver out of your pocket did you drop it? A. No.

Q. In which pocket were you carrying the revolver? A. In my right hip pocket.

Q. I believe you stated the revolver you had was a 32 automatic? A. Yes.

Q. That is all.

Redirect Examination.

By Mr. MUSSO.—Now, Mr. Price, you said to Jovansen that you would knock the top of his head off, or words to that effect; was that in direct consequence of insults directed to the lady?

By the COURT.—What is the question?

By Mr. MUSSO.—The question is, did you say to Mr. Jovansen you would knock the top of his head off, or words to that effect; whether that was in consequence of words addressed to the lady?

A. Jovansen was making a lot of slanderous statements and I said if it were not for creating a scandal I would pnnch his head off; then Jovansen changed and agreed to serve us. I went and sat down, and as the Chinese made no motion to wait on us I told her it was very stupid and we had better go.

Q. Was that an excuse to drag the lady out of the place? A. Yes.

Q. You did your best to avoid a disturbance?

(Testimony of Stuart R. Price.)

A. Yes.

Q. You admit you drew this revolver just in order to commit an assault on Jovansen?

A. I do not.

By the COURT.—Who was this woman with you? What was her name?

A. I had rather not name the lady.

By Mr. MUSSO.—The lady is not in Shanghai; with your Honor's consent would rather this lady's name did not appear in public. It is immaterial who the lady was. Jovansen admits he made investigation afterwards and found the lady was respectable. The accused has no objection to telling the name but does not want the name in the papers, as a matter of kindness, your Honor.

By the COURT.—I will have to ask the question. Who was the lady?

A. She was a lady whom I met at the Astor House.

Q. What was her name? A. Stewart.

Q. What was here first name?

A. I do not know.

Q. Was she a married woman?

A. She was registered at the Astor House so, and so introduced to me; I presume so.

Q. You do not know what her first name was?

(Testimony of Stuart R. Price.)

A. No.

Q. Did you ever know?

A. Did I ever know?

Q. Yes. A. No.

Q. Mrs. Stewart or Miss Stewart?

A. Mrs. Stewart.

Q. Where did you meet Mrs. Stewart?

A. At the Astor House.

Q. How long had you known her?

A. A number of days; a week or two, I think.

Q. You met her the first time at the Astor House?

A. Yes.

Q. Where did she live at that time?

A. Newchwang, as I understand.

Q. Did you know then where she lived?

A. As a matter I heard her say.

Q. She told you she was from Newchwang?

A. Yes.

Q. Did you know then whether she was a married woman?

A. She was so registered; I never heard it contradicted; I knew nothing about the lady; had only been introduced to her, so had no reason to doubt.

Q. Had you been calling on her at the Astor House?

A. I had had tea with her at the Astor House in the reading-room.

(Testimony of Stuart R. Price.)

Q. She was out testing these revolvers on this afternoon?

A. I asked her to drive out with me.

Q. You say her husband was not with her?

A. Not at that time.

Q. Was he with her when visiting at the Astor House?

A. I do not think he was here.

Q. Had you ever heard of Mrs. Stewart before you met here here?

A. I had not.

Q. Did you know then anything of the character of the woman?

A. No.

Q. Had you heard anything about it?

A. No.

Q. She joined you in testing the revolvers?

A. She fired them.

Q. You say when the boys refused to serve you she herself went into the bar-room?

A. No, I did not say she went into the bar-room; I said she in some way understood what was said—something that was said, and hurried back towards the back. I saw her in the pantry; do not know whether she was in the bar-room or not; there were a number of entrances to the pantry.

(Testimony of Stuart R. Price.)

Q. She learned, however, why she was not served in the dining-room?

A. She said she had never been insulted before and did not understand why she was treated that way. She was talking to Jovansen when I entered, remonstrating with him for not serving her.

Q. When you went in there you found her remonstrating?

A. When I entered she was standing there talking with Jovansen about the way he treated her.

Q. You deny her swearing or anything?

A. She used no bad language.

Q. The witnesses have sworn that they knew this woman and knew her to be of doubtful reputation, and that was the reason why she was not served at this time. That was your understanding was the real reason why she was not served?

A. When I went to see Jovansen he made these statements; some very uncomplimentary statements.

Q. That was the first time you ever heard the reputation of the woman called in question?

A. Yes.

Q. Do you know what became of the woman afterwards? What did Mrs. Stewart do?

A. Returned to Newchwang, her home.

Q. You know nothing about why she came here?

A. I do not.

(Testimony of Stuart R. Price.)

Q. You had known her about a week?

A. A week or two weeks.

Q. You had called?

A. Had had tea with her.

Q. Had you been driving with her?

A. At times. The reason I know she is from Newchwang, I have since received a letter from her husband about this affair.

Q. She lives in Newchwang now? A. Yes.

Q. You did not know anything then about her previous history?

A. I knew nothing about it.

Q. I asked you the question if you knew anything about her previous history? A. Nothing.

By Mr. MUSSO.—I wish to introduce as evidence an affidavit made before the American Consul-General at Newchwang.

By the COURT.—(Reads:) These papers appear to be from Anna Stewart, wife of Robert F. Stewart, Newchwang. Very well.

(See copy of affidavit included in this transcript.)

FREDERICK DAVIES, duly called, sworn, examined, testified as follows:

Direct Examination.

By Mr. MUSSO.—What is your full name?

(Testimony of Frederick Davies.)

A. Frederick Davies.

Q. You are a captain? A. Yes.

Q. Do you recollect calling at St. George's Hotel on the evening of 24th July last?

A. No, I did not call at St. George's Hotel.

Q. Do you recollect seeing Mr. Jovansen in the evening of 24th July?

A. In the evening, yes; in my office at the Astor House; I was manager of the Astor House at the time he came into my office.

Q. What happened when he came to the office?

A. I knew he had had some trouble—there were rumors about the hotel—with Mr. Price, and I said “You are a nice chap; drawing a knife on your guests”, and he said he did not draw a knife. I asked what was the matter and he said Price was in there and said something about a revolver; said, “I got hold of a bottle.” I said, “Rumor says you took hold of a knife”; he said, “Well, I did get hold of a carving knife.” Those were his words, “carving knife.”

Q. What time in the evening was this?

A. Somewhere about seven o'clock; not quite seven in the evening.

Q. Did Jovansen make any statement as to what happened after he got hold of this carving knife?

A. No, I do not remember exactly.

(Testimony of Frederick Davies.)

Q. One question about the lady referred to in these proceedings. Was she not a guest at the Astor House? A. Yes.

Q. So far as you knew was she a respectable lady?
A. Yes.

Cross-examination.

By Mr. BASSETT.—Have you stated the entire conversation between you and Mr. Jovansen at that time?

A. I think that was all; it was very brief.

Q. He said he got hold of a knife?

A. Yes, a carving knife.

Q. Did he state whether he seized the knife before or after the revolver was pointed at him?

A. No.

Q. That is all.

By the COURT.—How long was Mrs. Stewart in the Astor House?

A. She first came only to be there a few days; she was expecting her husband down from Newchwang; she was at the hotel office very often asking to be sure to meet the boats from Newchwang and Tientsin. He did not turn up in time and we sent telegrams to her husband to know whether she should stay or go back to Newchwang. He was to come down for the races; I saw the telegram.

(Testimony of Frederick Davies.)

Q. Was she traveling alone?

A. She came there alone to meet her husband.

Q. How long was she stopping there?

A. I do not quite remember.

Q. You knew nothing about her?

A. I had never met her.

Q. Knew nothing about her reputation?

A. No.

Q. The quarrel arose out of an insinuation; upon a charge that the woman was of doubtful reputation, hence Jovansen and his servants refused to serve them in the dining-room at St. George's Hotel.

A. She always behaved at the Astor House.

Q. You knew nothing about her before; nothing about her?

A. I knew Mr. Stewart, but it was eight or nine years since I had heard from him; before I knew he was in Newchwang.

Q. You knew nothing about her? A. No.

Q. That is all.

JOHN W. WINKELBACH, duly called, sworn, examined, testified as follows:

Direct Examination.

By Mr. MUSSO.—What is your full name?

A. John W. Winkelbach.

Q. What is your occupation?

(Testimony of John W. Winkelbach.)

A. Contractor and builder.

Q. Do you know Mr. Jovansen? A. I do.

Q. Were you asked to be subpoenaed before the Consul-General? A. I was.

Q. Were you at St. George's Hotel on the afternoon of 24th July last?

A. I do not know whether it was exactly the 24th; do not remember the exact date; I was there when the disturbance occurred.

Q. Where were you at the time of the disturbance?

A. I was in the Terminal Bar doing some work, overseeing the work.

Q. Where is the Terminal Bar?

A. About 120 feet from the St. George's main building.

Q. What happened there?

A. I was in the Terminal Bar talking over the work with the Manager of the Terminal Bar, Mr. Farrell, when we heard a great commotion on the other side, shouting for help. Mr. Farrell and I started for the door; a boy came rushing from the hotel saying "Mr. Jovansen wants you." We went out into the road and started towards St. George's. I remember when we got to the main gates of the building we found them closed. Mr. Farrell was in advance of me and pushed the gate open; a Sikh was holding the gate shut, but as soon as he recognized

(Testimony of John W. Winkelbach.)

Mr. Farrell he let the gate open. When we got inside the gate Mr. Price was standing inside the gate and a woman was standing right behind him. Mr. Price had a revolver in his hand, holding it down this way, and Mr. Farrel started towards him and he put up his free hand and said, "Do not touch me," and Farrell asked, "What is the trouble?" He said, "I have just had a little row in here; I live in the Astor House, room 17—I want to get out of this gate"—

By the Court.—Who said this?

A. Mr. Price to Mr. Farrell; at that Mr. Farrell said "All right." Mr. Jovansen in the main dining-room of the St. George's shouted out, "Hold that man," and Farrell shouted back, "This is Mr. Price; I know him." Mr. Price then walked out of the gate and the woman followed him. Just outside the gate he handed the woman a revolver and made the remark, "It is not loaded anyway."

By Mr. MUSSO.—You saw Mr. Price holding and handing the revolver and handing it to the woman. Did he interfere?

A. No, he had it all in one hand. He stated when he handed it to the lady that it was not loaded.

Q. Did you happen to see Mr. Jovansen that day or the next morning? A. I did.

Q. When, that afternoon?

(Testimony of John W. Winkelbach.)

A. Right at the time of the occurrence, after Price had been taken to the police station.

Q. Did you ask what had happened?

A. I did.

By the COURT.—What is your purpose in bringing this out?

By Mr. MUSSO.—That Mr. Jovansen has stated that he used the knife.

By the COURT.—Do you want to impeach the testimony of Jovansen?

By Mr. MUSSO.—Certainly.

Q. What happened there?

A. Right after the occurrence I had a conversation with Mr. Jovansen; he was very much excited and made the statement that Price attempted to kill him; that he would not serve them and that Price had drawn a gun on him. Both Mr. Farrell and myself asked what had occurred and he told us that Mr. Price and this lady were sitting at the table and the No. 1 boy asked whether to serve them or not. He then told the No. 1 boy not to serve them. At this Jovansen stated the lady had come towards him and that he had retreated into the pantry; that she was using bad language to him and that he retreated into the pantry; and that Price followed him into the pantry.

(Testimony of John W. Winkelbach.)

He told Price to get out and picked up a bottle of salad oil. Price kept on advancing towards him, and he said he crawled under the table and shouted for help.

Q. Was any reference made to you about the knife?

A. About a month after that Mr. Jovansen made some reference that there was a knife lying on the table and that he picked it up.

Q. Did he state when Price was there?

A. He stated when Price was there Price came towards him and that he was afraid of him; that Price would strike him.

By the COURT.—Did he say anything about Price having a gun?

A. At the first time, yes. I do not know whether Jovansen gave me the impression he picked up the knife after Price drew the gun or not, or whether an impression that he had not drawn the gun.

&. (By the COURT.) The first time he did not say anything about the knife?

A. He told me Price advanced towards him and he picked up a bottle; said Price still advanced toward him and he dropped the bottle and got under the table.

Q. He told you this about half an hour after the occurrence?

(Testimony of John W. Winkelbach.)

A. About a month after I referred to the testimony given here; that I understood he had drawn a knife; he then stated that after he had picked up the bottle and told Price to get out, Price still advanced toward him, and as he was afraid he would do him an injury, he picked up a knife lying on the table. If I remember correctly then Price drew the gun and he dropped on his face; said he could do nothing else in the face of the gun.

Q. We want no deductions; we want exactly what was said.

A. As soon as he saw the gun he dropped under the table.

Q. Nothing about the woman?

A. He made a statement to Farrell and myself that during the occurrence the woman and Price had drawn a gun on him.

By Mr. MUSSO.—You said you referred Jovansen to the testimony given in the court below as to the knife introduced by him; did Jovansen make any statement besides that to you?

A. None at that time.

Q. That is all, your Honor.

By Mr. BASSETT.—I have no additional questions.

By the COURT.—What is your name?

(Testimony of Amerigo Lauro.)

A. John W. Winkelbach.

Q. That is all.

G. PASSERI, in business with the Societa Coloniale Italiano at Shanghai, China, being sworn as an interpreter of the Italian and English languages, interpreted the testimony of the following Italian witness:

AMERIGO LAURO, duly called, sworn, examined, testified through the interpreter as follows:

Direct Examination.

By Mr. MUSSO.—Ask witness what is his full name.

A. Amerigo Lauro.

Q. You were asked by the defense to appear at the former hearing of this case in July last, were you not? A. Yes.

Q. Do you remember on the afternoon of the 24th of July last going to St. George's Hotel?

A. Yes.

Q. What happened? Why did you go there?

A. He was going there to meet Mr. Musso to ask him something about a dinner party they had for that night.

Q. Why did he call at St. George's Hotel?

(Testimony of Amerigo Lauro.)

A. He called there because he knew that Mr. Musso used to call at St. George's when out for a drive in his motor car.

Q. What happened when he entered the place?

A. He went to St. George's to ask Mr. Jovansen whether Mr. Musso had been there.

Q. Well, what happened?

A. He went first in the bar and not seeing anybody there—not having seen Mr. Jovansen in the bar, went around the house into the pantry.

Q. What happened?

A. He says when he entered the pantry he saw Mr. Jovansen in front of the pantry door and another gentleman facing him, and at the same time Mr. Jovansen was picking up a knife from the table next to him, and the other gentleman, whom he did not identify at the time, taking a revolver out of his pocket. He saw that and then thinking something was going to happen which he would not care to mix in he preferred to go away and leave them to themselves.

Cross-examination.

By Mr. BASSETT.—How did you enter the pantry?

A. I was just going to enter the pantry when I saw these gentlemen.

(Testimony of Amerigo Lauro.)

Q. From what room were you about to enter the pantry?

A. Says he was in the big dining-room.

Q. Were the doors of the pantry open?

A. Yes, all open.

Q. You stated, did you not, that you saw Mr. Jovansen picking up a knife at the same time Mr. Price drawing a revolver?

A. Yes, after Mr. Jovansen took up the knife Mr. Price took out a revolver from his pocket.

Q. At the time Mr. Jovansen took hold of the knife was Mr. Price advancing towards him?

A. Mr. Jovansen made a step towards Mr. Price with the knife.

Q. And Mr. Price was standing still at that time?

A. Says he just went away when Mr. Price was drawing the revolver.

Q. I know, but before, before?

A. He says about in the middle of the room was a table and Mr. Price was standing by this table.

Q. How far from Mr. Jovansen was Mr. Price when Mr. Jovansen reached for the knife?

A. He says he does not remember well; says about five yards; four or five yards. He remembers there were two tables in the room, one in the middle and one next the wall; Price was standing by the

(Testimony of Amerigo Lauro.)

one in the middle and Mr. Jovansen by the one on the wall.

Q. Mr. Jovansen was by the wall?

A. Mr. Jovansen by the wall, Mr. Price in the middle of the room.

Q. You are positive Mr. Jovansen picked up the knife and started toward Mr. Price before Price drew the revolver?

A. Yes, Mr. Jovansen took out the knife before Mr. Price drew the revolver.

Q. Did you see Mr. Jovansen with a bottle?

A. No.

Q. Did you see a bottle at all?

A. No.

Q. Did you hear Mr. Jovansen scream?

A. No. He heard a little noise before he—

Q. Where did he go when he left the hotel?

A. He went directly from Bubbling Well Road to his office.

Q. Which direction from St. George's did he go when he left the hotel?

A. From St. George's to Bubbling Well Road.

Q. This way? A. Yes.

Q. You heard no cries, no screams, after you left?

A. He says when he went away he heard some-

(Testimony of Amerigo Lauro.)

body crying; did not care to wait; did not care to mix in this kind of business.

Q. What were the nature of these cries? What was the person shouting?

A. Says he could not understand.

Q. Where were you when you heard the shouts?

A. He was already out of the door; could not understand what they were talking about.

Q. He was out of the door when the shouts began; how far had he gotten when he first heard the shouts?

A. Next to the gate of the hotel.

Q. How long have you lived in Shanghai?

A. Two and one-half years.

Q. What business are you engaged in?

A. Merchant.

Q. I believe you said you never knew Mr. Price before this time?

A. He has seen him sometimes on the street and then in the Astor House Hotel.

Q. Did he know his name at that time?

A. No, did not know it.

Q. Mr. Price's back was turned to you when you looked into the pantry, was it not?

A. Yes, his back was turned.

Q. How could you recognize the gentleman you saw as Mr. Price?

(Testimony of Amerigo Lauro.)

A. Mr. Price, in the moment of drawing the revolver, turned half around and he could recognize him.

Q. You knew him very well to recognize him by glancing, is it not true?

A. After he had seen him again he could make out the gentleman he saw then in the pantry was Mr. Price.

Q. You were subpoenaed here the next day to testify in this case? He has stated he was subpoenaed to testify in this case.

A. He said he would not come, but Mr. Brooks asked him to come, and he answered he would come if his Consul would ask him.

Q. How did Mr. Brooks know you knew about this?

By Mr. MUSSO.—I object to that question; witness cannot be asked how someone else knew something.

By Mr. BASSETT.—I withdraw that question. Did you have a conversation with anybody about having seen this difficulty?

By Mr. MUSSO.—I do not think the translation is correct. I think the question is—Did he have any conversation about the difficulty at St. George's?

(Testimony of Amerigo Lauro.)

A. The same night he talked about it in Mr. Musso's office.

Q. When was he asked to come to court?

A. He was asked about one day after.

Q. The next morning Mr. Brooks asked him?

A. The next morning.

Q. Were you in Shanghai the next day?

A. Yes.

Q. Why did you not come down here at Mr. Brooks' request without a subpoena?

A. He says because he was very busy and besides he did not care much about mixing up in this kind of thing.

Q. That is all.

Redirect Examination.

By Mr. MUSSO.—I have another question, if your Honor please. Did you see a lady at the St. George's Hotel at the time of the occurrence?

A. Yes.

Q. Did you see again the lady in the afternoon, and where, after the occurrence?

A. He saw the lady after he returned home in the office of Mr. Musso.

By the COURT.—Do you understand English?

A. Very little.

Q. Was anything said between Jovansen and Price at the time of the occurrence; at the time he

(Testimony of Amerigo Lauro.)

saw Jovansen take hold of the knife? Ask him if he heard him say anything.

A. They were saying something but he could not make out what they were saying.

Q. When he saw them it was only for one moment, I understand?

A. He saw them only for a moment, because he saw there was something wrong and left at once.

Q. During that moment he saw Jovansen pick up the knife and threaten, did he see Price draw his revolver?

A. Yes, this moment he saw that, then went away.

Q. He is clear, then, that the revolver was drawn after the knife was picked up by Jovansen?

A. Yes.

Q. Did Jovansen draw back as though to strike—did he make any effort to strike with the knife?

A. At the same time he picked up the knife he rose his arm and made a step forward.

Q. And then Price drew his revolver?

A. And then Price drew his revolver.

Q. And that is all he saw?

A. That is all he saw.

Q. That is all.

(Testimony of Amerigo Lauro.)

Recross-examination.

By Mr. BASSETT.—Where was the woman when the revolver was drawn?

A. He does not remember; he had seen a lady next to the bar door.

Q. That is all.

By Mr. MUSSO.—Your Honor, this is the case for defendant. I think it is such a clear case that I do not hardly feel justified in taking up the time of the Court for an argument, and wish to submit the case to your Honor, if the learned Attorney-General consents.

By Mr. BASSETT.—I am willing the case should be submitted without argument, your Honor.

By the COURT.—I will take the case under advisement. Court will adjourn until tomorrow at ten o'clock.

Proceedings on January 16th, 1907.

By the COURT.—In the case of the United States vs. S. R. Price, the Court, after consideration of the testimony in the case, has reached the conclusion that the accused is guilty of the offense as charged in the complaint.

The judgment of the Court fixing sentence will be handed down on Friday morning at 10:00 o'clock; meantime Mr. Price will be required to give bond in

the sum of four thousand dollars gold, to appear at court at such time as may be required for the termination of this trial.

By Mr. MUSSO.—If your Honor pleases, I most respectfully wish to have exception noted against the decision of the Court convicting accused, as same is against the law, against the evidence, against the weight of evidence, and I hereby give notice that we appeal to the Circuit Court of Appeals.

By the COURT.—On Friday morning, after the judgment of the Court has been announced, you may state your exceptions.

By Mr. MUSSO.—If the Court please, may I ask that the present bond be continued until this afternoon?

By the COURT.—I require a new bond. I will ask the Marshal to take charge of accused until he furnishes bond in the sum of four thousand dollars gold to answer the further requirements of the Court.

I, T. B. Jackson, being duly sworn, depose and say that the above transcript is a full, true and correct verbatim account of the evidence taken upon the trial of said case.

(Signed)

T. B. JACKSON.

Sworn to and subscribed before me this 17th day of January, 1907.

[Seal] (Signed) F. E. HINCKLEY,
Clerk, United States Court for China, Shanghai,
China.

[Endorsed]: Original. Testimony taken January 15th and 16th, 1907. Filed this January 17th, 1907. F. E. Hinckley, Clerk of Court. Paper No. 13.

United States Court for China.

Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE.

Order Canceling Bail Bond for \$2500.00.

The bond heretofore given in the above-named case for the appearance of S. R. Price, the defendant in the above-named case, before this Court, in the sum of two thousand five hundred dollars (dollars 2500.00), the sureties upon which are F. M. Brooks and C. S. Virgil, is hereby canceled and each of the said securities is hereby released of any and all responsibility thereon.

Given at Shanghai, China, this 18th of January, 1907.

(Signed) L. R. WILFLEY,
Judge.

[Endorsed]: Release of F. M. Brooks and C. S. Virgil. Bond Canceled. Filed this January 18, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 14.

In the United States Court for China.

Criminal Action No. 3.

UNITED STATES OF AMERICA

v.

S. R. PRICE,

Defendant.

Judgment.

The information in this case charges one S. R. Price with an assault on one A. Jovansen in the city of Shanghai, China, on the twenty-fourth day of July, 1906. The information was filed on the twenty-ninth day of December, 1906. The case was tried on the fifteenth day of January, 1907.

The testimony discloses the following facts: A. Jovansen, the accusing witness, was on the 24th day of July, 1906, the lessee and manager of St. George Hotel, which is located at No. 205 Bubbling Well Road, in the city of Shanghai, China. On the above-mentioned date the accused, in company with one Mrs. Anna Stewart, entered the main dining-room of the hotel and ordered refreshments. Whereupon the waiters, who were Chinese boys, told Jovansen, who

was in the pantry of the hotel, that the woman was not a fit person to be served. No. 1 dining-room boy testified that he had formerly been a servant in the Astor House Hotel, Shanghai, where he had known said Mrs. Stewart, when she was a boarder at said Astor House before, and that she was "not a proper person." Jovansen upon receiving this information instructed the boys not to serve the parties.

Price, upon learning the reason why they were not served, went to the rear of the hotel and found Jovansen in the pantry. He testified that he approached Jovansen and said, "Jovansen, what is the matter with you?" "I told him he was absolutely wrong, he persisted in being impudent and forward, and so I told him that if it were not for making a scandal I would punch the top of his head off, or words to that effect. I told him he was crazy." Price then returned and sat down by his companion. After waiting for a time and finding that the refreshments were not forthcoming, the said Mrs. Stewart proceeded to the rear of the hotel where she entered the bar-room and after cursing and abusing the Chinese boys, entered the pantry where Jovansen was and begun swearing at him. Mrs. Stewart in her affidavit filed in this case states that she took the matter up with Jovansen herself. Her language is as follows: "Anna Stewart, being duly sworn according to law deposes and says:

“During her stay in Shanghai in July, 1906, through a mutual friend, she made the acquaintance of S. R. Price, Esq., at the Astor House Hotel. In the afternoon of the 26th day of July, A. D. 1906, the said Price drove her out to Siccawei, where he wanted to try some revolvers (2) which he had just purchased; that having tried the revolvers in question, they stopped at the St. George’s Hotel to have some refreshments; these, however, were refused there, and she was aware that Mr. Jovansen for some reason did not wish to serve them. On her going to him for an explanation, which was unsatisfactory to her, she made the assertion that he would regret his action when her husband came to Shanghai, where she expected him to be in a few days.”

The dining-room boys, the bar-room boys and the house coolie testified that the said Anna Stewart entered the bar-room using very bad language, and approached Jovansen, swearing at him and abusing him for not serving her. Jovansen testified that she went so far as to draw a revolver upon him.

The evidence further shows that Price followed her to the rear of the building, and entered the pantry where he found her quarreling with Jovansen. Price testified that Jovansen had a bottle in his hand when he (Price) entered the pantry and was ordering the woman out of the room, and stated that Jovansen picked up a knife which was lying on the table; where-

upon Price drew his revolver, and said "Drop that knife." This version is corroborated by the affidavit of Mrs. Stewart filed herein, almost word for word. It is also supported by the testimony of Amerigo Lauro, who was in the hotel at this time, and who happened to glance in the pantry just in time to see Jovanson pick up the knife, and to see Price subsequently draw his revolver.

The following is Jovansen's version of the occurrence: "Question: What happened when he came to the hotel? Answer: My number one boy was in charge of the dining-room and said to me 'no good, no can.' I said, 'What is it?' I had given the boy instructions that no ladies of ill fame should be served in my place. The boy came from the Astor House, and said he knew the lady. I told him to ask Mr. Price to take the lady to another place in the greenhouse; he said he would not; the boy said, 'the manager says no can.' He insisted on being served and wanted to see the manager. The boy said 'No can; manager no have.' The lady came into the bar-room where she had seen me and began to use bad language towards me. I said nothing but kept quiet. Mr. Price came from the dining-room through the pantry and said, 'What is up here?' Mr. Price began to use bad language, called me all kinds of names, insulted me as much as he could. I kept quiet; I said to take her to his own place as I wished to keep my place respectable. He kept on insulting me and said

‘Will you serve me or not?’ He pulled out a revolver; I got frightened, then the lady came and also pulled out a revolver, two against me. So I got hold of the table, got my hand on a bottle, dropped the bottle hiding myself under the table; I screamed for assistance.’

Jovansen’s testimony is supported in all its essential features by the testimony of Tung Yang, No. 1 coolie at the hotel, of Ah Dow, bar-room boy, of Chang Zsoui Sung, No. 1 bar boy, and of Foh Sun, the No. 1 dining-room boy. The Chinese boys did not see the woman draw a revolver, but they all testify that Price was the aggressor, that Price entered the pantry threatening Jovansen, and undertook to draw from his hip pocket a revolver, which fell to the floor. He immediately picked it up and pointed it at Jovansen’s face, at the same time, cursing Jovansen and calling him bad names. All of the Chinese boys testify that Jovansen had neither a bottle or a knife in his hand, but that in his fright he knocked the bottle over and spilt on his clothes the oil it contained.

The testimony also shows that after the occurrence was terminated Price and the woman left the hotel, and upon the request of the woman Price gave her his revolver. The policeman thereafter found another revolver in the carriage. The two revolvers are before the Court as exhibits in this case.

The testimony indicates that the revolvers were not loaded at the time of the occurrence under consideration.

This is substantially the testimony in this case.

In order to give proper weight to the evidence before the Court, it is necessary to take into consideration the circumstances surrounding the case, the manner and disposition, character and interests of the witnesses. The trial disclosed the fact that Jovansen is an ignorant, timid man of excitable temperament.

The testimony showed that:

The accused and his companion are intelligent persons, and bold and aggressive, rather than timid or retiring in their disposition.

Jovanson remained in the pantry during the entire episode, and pursued the natural, reasonable and proper course for an innkeeper under the circumstances.

On the other hand, the accused and his companion on being apprised why they could not be served, proceeded to the rear of the hotel and picked a quarrel with Jovanson.

In view of the facts, it is highly improbable that Jovansen offered any serious resistance. Had Jovansen been a bold, rough man, and had he proceeded to the dining-room where the accused was, and ordered him and his companion off the premises in an

ungentlemanly manner, then there would have been some warrant and reason for the attitude which Price says he took in this matter.

The testimony of Signor Lauro is so meager, and yet so specific and certain on the point it covers, that it tends to mystify rather than illumine the case. It is not convincing to say the least.

Taking into consideration the evidence adduced at the trial, the manner, character and interests of the witnesses, and all the circumstances surrounding the case, there is no doubt in the mind of the Court that the accused, S. R. Price, and his companion, Mrs. Anna Stewart, became incensed at the action of the servants of St. George's Hotel in refusing them refreshments, and that said Mrs. Stewart took the matter in her own hands, and proceeded through the bar-room to the pantry, where she quarreled with Jovansen, the manager of the hotel, and that thereupon the accused followed her and took up her quarrel, and, without provocation or justification, drew his revolver and pointed it at the face of Jovansen, abusing and threatening him, and thus put the said Jovansen in great fear of bodily harm.

The fact that the revolver was unloaded does not change the aspect of the case. It is a well-settled principle of law that—"There is no need for the party assaulted to be put in actual peril, if only a well-founded apprehension is created, for his suffer-

ing is the same in the one case as in the other, and the breach of the peace is the same. To illustrate: If within shooting distance one menacingly points at another with a gun, apparently loaded, yet not in fact, he commits an assault the same as if it were loaded. There must be some power, actual or apparent, of doing bodily harm, but apparent power is sufficient." (Bishop's New Criminal Law, volume 2, section 32.)

In a Scotch case, the Judge in delivering the judgment of the Court, used the following language:

"The presenting of a pistol, even if it were not loaded, providing the party at whom it was presented supposed it to be loaded, was undoubtedly in law an assault." (Morrison Case, 1 Braum, 394, 395.)

It is not the secret intent of the party, nor the undisclosed fact of his ability or inability to commit a battery that is material, but what his conduct and the attending circumstances denote at the time to the party assaulted. If to him they indicate an attack, he is justified in resorting to defensive action. It is the outward demonstration that constitutes the crime.

The Court therefore adjudges the said accused, S. R. Price, guilty as charged in the complaint, namely, that on the 24th day of July, A. D. 1906, in the city of Shanghai, China, with a dangerous weapon, to wit, a 32-calibre Automatic Colt's Revolver,

in and upon one A. Jovansen, did willfully make an assault by pointing the said revolver at the said Jovansen in a threatening manner, and by so pointing the said revolver at the said Jovansen did put the said Jovansen in great fear of bodily harm contrary to law,

And sentences said S. R. Price for the commission of said crime to six months' imprisonment in the gaol of the American Consulate at Shanghai. Said sentence to begin on 18th day of January, 1907.

(Signed) L. R. WILFLEY,

Judge of the United States Court for China.

[Endorsed]: Judgment. Filed this January 18, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 15.

In the United States Court for China, at Shanghai.

Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Final Commitment.

The President of the United States of America, to the Marshal of the United States Court for China, Greeting:

The defendant, S. R. Price, having been tried and found guilty as charged in the information filed in this action of the crime of assault with a dangerous weapon, contrary to law ;

Thereupon the Court pronounced the following sentence, to wit: That the said S. R. Price be imprisoned in the prison for American convicts at Shanghai, China, for the term of six months, beginning on the eighteenth day of January, 1907.

Therefore this is to command you, the said Marshal of the United States Court for China, to take the body of the said S. R. Price and commit the same to the aforesaid prison; and this to command you, the officers and keepers in charge of the aforesaid prison, safely to keep the body of the said S. R. Price pursuant to the sentence hereinbefore stated.

Witness the Honorable L. R. WILFLEY, Judge of the United States Court for China, this eighteenth day of January, 1907, and the seal of the said Court.

[Seal] (Signed) F. E. HINCKLEY,

Clerk of Court.

January 18th, 1907.

In accordance with this order, I have to-day committed the within-named S. R. Price to the prison for American convicts at Shanghai, China.

(Signed) O. R. LEONARD,
Marshal U. S. Court for China.

[Endorsed]: Final Commitment. Filed this January 18, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 16.

In the United States Court for China, at Shanghai.

Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Assignment of Errors.

Now comes the defendant in the above-entitled action and in connection with his petition for an appeal makes and assigns the following errors which he avers in the proceedings had prior to the trial of this cause and during the trial of this cause were prejudicial to this defendant, and upon which he will rely upon appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to wit:

1. Error of the Court in overruling objection of attorney for defendant that no demurrer, answer, or traverse of the sworn plea in bar filed by the defendant on the fifth day of January, 1907, had been made or filed by the United States District Attorney in behalf of the prosecution, and that therefore said

plea in bar should be sustained, to which ruling of the Court defendant duly excepted.

2. Error of the Court in excluding the offer of oral evidence proposed by attorney for defendant to support the allegations of said plea in bar showing that the record of the Consular Court was incomplete, and to corroborate the allegations set forth by said plea in bar, to which ruling defendant then and there duly excepted, said plea in bar being a plea of autre fois acquit.

3. Error of the Court in overruling said plea in bar after oral argument thereon, to which ruling exception was duly taken by defendant.

4. Error of the Court in overruling the question asked by attorney for defendant at the trial of the cause as follows: the charge being a charge of assault, the complaining witness on the stand under cross-examination; and being examined as to his credibility, the following question was asked:

Q. "Now, Mr. Jovansen, is it not a fact that some days ago you reported to the Bubbling Well Police Station that there was a gentleman in your place who had a bomb, a revolver, a knife, and murderous-looking eyes?"

Mr. BASSETT.—We object to that question.

The COURT.—What point do you wish to prove, Mr. Musso?

Mr. MUSSO.—We want to prove that he was excited at the time he saw a bomb, a revolver, a knife that were never in existence; that the police called there and found an innocent gentleman there for pleasure.

The COURT.—He has admitted he is nervous and excitable.

Mr. MUSSO.—It would be an instance of nervousness.

The COURT.—He has already admitted a nervous temperament, furthermore, the evidence is not competent.

Mr. MUSSO.—I except.”

5. Error of the Court in excluding the questions set forth herein under the trial of said cause under the following circumstances:

Witness A. Dow, a Chinaman in the employ of complaining witness, was testifying to said assault on cross-examination, was asked the following question:

“Q. Now, Mr. A. Dow, is it not a fact that this is not the first time you have given evidence for Mr. Jovanson in his cases? Is it not a fact that you gave evidence for Mr. Jovanson in the Astor House case?

Mr. BASSETT.—I object.

Mr. MUSSO.—It shows that he is a professional witness for Jovanson.

The COURT.—Not at all.

Mr. MUSSO.—Your Honor overrules my question?

The COURT.—Certainly.

Mr. MUSSO.—I make exception.

The COURT.—Note exception.”

6. Error of the Court in excluding following question in cross-examination during trial of the cause under the following circumstances:

William Morey, a police sergeant, was upon the stand, he was asked in cross-examination the following question:

“Q. Is it not a fact that Mr. Jovanson, the complainant in this case, made a charge at your station a few days ago?”

Mr. BASSETT.—I object to that.

The COURT.—What do you mean to prove by this?

Mr. MUSSO.—I wish to prove by this that Mr. Jovanson made a charge against a man of having a bomb, a revolver, and a knife in his possession.

The COURT.—Ruled out.

Mr. MUSSO.—I except again.”

7. Error of the Court in rendering a decision and judgment finding defendant guilty of assault as charged in the information, on the ground that said judgment and decision convicting defendant were contrary to law, against the evidence and against the weight of evidence.

8. Error of the Court in sentencing the defendant to six months' imprisonment in the jail for American convicts at Shanghai, China, without affording counsel for defendant the opportunity of moving an arrest of judgment or asking defendant whether or not he had anything to say as to why sentence should not be pronounced, to which exception was duly taken by defendant.

(Signed) S. R. PRICE.

[Endorsed]: Assignment of Errors. Filed this January 19, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 17.

*In the United States Court for China, Shanghai,
China.*

Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Motion for Appeal.

The above-named defendant, conceiving himself aggrieved by the decision made and entered in the above-entitled case on the 16th day of January, 1907, whereby and whereupon it was decided that he was guilty of assault as charged in the information lodged in said court, does hereby appeal from the said decision and judgment of the 16th day of January, 1907, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors filed herein, and he prays that this appeal may be allowed and that a transcript of the record, papers and proceedings upon which said decision and judgment was made duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated Shanghai, China, January 18th, 1907.

(Signed) S. R. PRICE.

[Endorsed]: Motion to Allow Appeal. Filed this January 19, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 18.

In the United States Court for China, at Shanghai.
Criminal Action No. 3.

THE UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Motion to Amend Record.

Now comes the defendant in the above-entitled action by his attorney, G. D. Musso, and moves this Honorable Court to amend the record in the above-entitled action as to the proceedings therein on Tuesday, January 6th, 1907; a copy of said amendment in substance being attached hereto and made a part hereof.

(Signed) G. D. MUSSO,
Attorney for Plaintiff.

Shanghai, February 7th, 1907.

In the United States Court for China, at Shanghai.

THE UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Notice of Motion to Amend Record.

To the Honorable A. Bassett, District Attorney:

Please take notice that the motion in the above-entitled case will be called up for hearing on Monday, the 11th February, 1907, at 10 o'clock A. M., or as soon thereafter as counsel may be heard.

(Signed) G. D. MUSSO.

Shanghai, 7th February, 1907.

Tuesday, January 8, 1907.

UNITED STATES OF AMERICA

vs.

S. R. PRICE.

Proposed Amendment of Record.

ASSAULT.

Counsel for defendant filed a plea in bar setting forth that the defendant had been tried by a court of competent jurisdiction for the same offense and had been duly acquitted. (Clerk will here insert plea in bar.) Upon the hearing of said plea in bar counsel for defendant called the attention of the Court to the fact that no traverse or demurrer had been filed to the defendant's plea in bar, and the Court asked the District Attorney if there was any traverse or demurrer filed to said plea in bar, and

the District Attorney replied "no." The Court ruled that it was unnecessary to file any answer to said plea in bar; to which ruling the defendant then and there duly excepted. Counsel for defendant then offered oral testimony in support of the record of the former trial, the same being incomplete, and also offered oral testimony by witnesses present in court in support of the facts set forth in said plea in bar; the Court overruled said offers, to which ruling of the Court the defendant then and there duly excepted. Argument then followed between counsel for defendant and the District Attorney in behalf of the United States. The Court overruled said plea in bar to which ruling defendant then and there duly excepted.

(Signed) G. D. MUSSO.

[Endorsed]: Defendant's Motion to Amend Record of Proceedings of January 6, 1907. Filed this February 8, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 19.

In the United States Court for China, at Shanghai.

Criminal Action No. 3.

UNITED STATES OF AMERICA,

vs.

S. R. PRICE,

Defendant.

Bill of Exceptions.**ASSAULT.**

Be it remembered that afterward, to wit, on the 8th day of January, 1907, at a stated term of the said Court held in Shanghai, Empire of China, before his Honor, L. R. Wilfley, Judge, the United States of America being represented by A. Bassett, Esq., District Attorney, and defendant being represented by G. D. Musso, Esq., upon the arraignment in the above-entitled case, the defendant filed his plea in bar, and said plea in bar being set down for hearing before his Honor, the said Judge, the following proceedings were had, to wit:

Counsel for defendant filed a plea in bar setting forth that defendant had been tried by a Court of competent jurisdiction for the same offense and had been duly acquitted. Upon the hearing of said plea in bar counsel for defendant called the attention of the court to the fact that no traverse or demurrer had been filed to the defendant's plea in bar, and the Court asked the District Attorney if there was any traverse or demurrer filed to the defendant's plea in bar, and the District Attorney replied that there was not, since there was no dispute about the allegation of fact contained in the said plea. The Court ruled that it was unnecessary to file any answer to said plea in bar, to which ruling the defendant then

and there excepted. Counsel for defendant then offered oral testimony in support of the record of the former trial, the same being incomplete, and also offered oral testimony by witnesses present in Court in support of the facts set forth in said plea in bar.

The Court overruled said offers because the allegations of fact contained in the plea had been admitted, to which ruling of the Court the defendant then and there duly excepted. Argument then followed between counsel for defendant and the District Attorney on behalf of the United States. The Court overruled said plea in bar, to which ruling defendant then and there duly excepted.

And thereafter the said cause being set down for hearing on the 15th day of January, 1907, before his Honor, L. R. Wilfley, in the above-entitled Court, defendant having pleaded not guilty, and upon the trial of that issue, the United States of America called as witness, A. Jovansen, who gave testimony in chief, and upon cross-examination counsel for defendant asked Mr. Jovansen the following question:

Q. Now, Mr. Jovansen, is it not a fact that some days ago you reported to the Bubbling Well Police Station that there was a gentleman in your place who had a bomb, a revolver, a knife, and murderous looking eyes?"

To which question the District Attorney objected.

The COURT.—What point do you wish to prove, Mr. Musso?

Mr. MUSSO.—“We want to prove that he was excited at the time he saw a bomb, a revolver, a knife that were never in existence; that the police called there and found an innocent gentleman there for pleasure.”

The COURT.—“He has admitted he is nervous and excitable.”

Mr. MUSSO.—“It would be an instance of nervousness.”

The COURT.—“He has already admitted a nervous temperament, furthermore the evidence is not competent.”

To which ruling the defendant then and there duly excepted. (See pp. 000 transcript of Evidence 9.)

And thereupon a witness, A. Dow, a Chinese, was called on behalf of the United States of America, and testified on direct examination, and upon cross-examination was asked the following question.

Q. “Now, Mr. A. Dow, is it not a fact that this is not the first time you have given evidence for Mr. Jovansen in his cases? Is it not a fact that you gave evidence for Mr. Jovansen in the Astor House case?”

To which question the District Attorney objected, and thereupon defendant’s counsel stated that the

object of the question was to show that he was a professional witness for Mr. Jovansen; the Court sustained the objection of the District Attorney, and defendant's counsel then and there excepted. (See pp. 000 transcript of Evidence 17.)

And thereupon a witness, one William Morey, Police Sergeant, was called on behalf of the United States of America and gave testimony in chief, and whereupon he was asked upon cross-examination by counsel for defendant:

Q. "Is it not a fact that Mr. Jovansen, the complainant in this case, made a charge at your station a few days ago?"

To which question the District Attorney objected.

By the COURT.—"What do you mean to prove by this?"

Mr. MUSSO.—I wish to prove by this that Mr. Jovansen made a charge against a man of having a bomb, a revolver, and a knife in his possession."

The Court sustained the District Attorney's objection, and thereupon counsel for defendant duly excepted.

And thereupon the Court found the defendant guilty as charged, and the defendant then and there duly excepted to the said decision on the ground that the same was against the law, against the evidence, and against the weight of evidence, and gave notice of

appeal to the Circuit Court of Appeals for the Ninth Circuit.

The above bill of exceptions is hereby settled, signed, sealed and allowed this 17th day of February, 1907.

(Not signed)

Judge of the United States Court for China.

[Endorsed]: Bill of exceptions. Filed this February 19, 1907. (Signed) F. E. Hinckley, Clerk of Court. Original paper No. 20.

In the United States Court for China, at Shanghai.

Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE.

Undertaking on Appeal.

Whereas the above-named defendant was convicted of assault and sentenced on the 18th day of January, 1907, to six (6) months' imprisonment; and

Whereas the said defendant has appealed from the said decision and sentence, and from the whole thereof, to the United States Court of Appeals for the 9th Circuit, to be holden at San Francisco, California; and,

Whereas the said defendant has been duly admitted to bail in the sum of four thousand dollars, lawful money of the United States, pending said appeal,

Now, therefore, the said defendant is hereby held and firmly bound in the sum of four thousand dollars, lawful money, of the United States to be paid to the said United States of America to which promise the said defendant well and truly binds himself, his heirs, executors, administrators, and assigns, and in lieu of sureties (Sgd) S. R. Price, he has this day deposited with the clerk of the above-named Court the sum of four thousand dollars, lawful money of the United States in its equivalent in Mexican currency.

The condition of this obligation is such that if the said S. R. Price shall present himself for judgment in the above-named Court when said appeal shall have been determined and shall obey all lawful orders of the said Court, then this obligation to be null and void, otherwise to remain in full force and effect.

In witness whereof the said defendant has hereunto set his hand this 23d day of February, A. D. 1907.

(Sgd.) S. R. PRICE.

Approved this 23d day of February, A. D. 1907.

(Signed) L. R. WILFLEY,
Judge United States Court for China.

[Endorsed]: Undertaking on Appeal. Filed this February 23, 1907. (Signed) F. D. Hinckley, Clerk of Court. Original paper No. 21.

Cablegram of February 22, 1907.

Feb. 22, 1907.

42 USG SanFrancisco 82 FST 23 United States
Court for China Shanghai

Order entered to-day that pending appeal Price be admitted to bail upon entering into sufficient bond approved by you in four thousand dollars conditioned that Price appear in your Court to answer judgment after determination of appeal mandate this Court issued to your clerk directing transmission here of certified copy entire record and proceedings in case U. S. versus S. R. Price upon payment proper costs therefor.

F. D. MONCKTON,

Clerk Circuit Court of Appeals Ninth Circuit.

[Endorsed]: Telegram February 22, 1907, to United States Court for China, Paper No. 22.

Cablegram of February 23, 1907.

(U. S. Government Telegram)

F. D. Monckton Clerk Circuit Court Appeals San Francisco.

District Attorney requests Court again examine consular Court regulation sixty-six having force of law statutes forty-one hundred eighteen act creating

this Court section five refers my treatise consular jurisdiction judge modified regulation sixty-six giving Court discretion instead minister bail denied because appeal frivolous papers before appellate court unofficial incomplete attorney petitions suspension order until full record arrives per steamship Coptic leaving Shanghai February twenty-six.

HINCKLEY,

Clerk Court China.

(75 words) Shanghai, February 23, 1907.

[Endorsed]: Letter Copy page 255. Copy of telegram February 23, 1907. F. E. Hinckley, Clerk, to F. D. Monckton, Clerk. Paper No. 23.

Cablegram of February 24, 1907.

February 24th, 1907.

28 USG SanFrancisco 15 Hinckley Clerk China
Court Shanghai China.

Court adheres to order.

MONCKTON,

Clerk Court of Appeals.

[Endorsed]: Telegram February 24, 1907. F. D. Monckton Clerk, to F. E. Hinckley, Clerk. Paper No. 24.

Cablegram of February 25, 1907.

(U. S. Government Telegram)

Monckton, Clerk Court of Appeals San Francisco.

Price released under terms of appellate court order

HINCKLEY,

Clerk Court for China.

(19 words—Shanghai, China, February 25, 1907.)

[Endorsed]: Letter Copy page 256. Telegram February 25, 1907. F. E. Hinckley, Clerk, to F. D. Monckton, Clerk. Paper No. 241½. This paper was not numbered in transcript on appeal.

In the United States Court for China, at Shanghai.

Criminal Action No. 3.

UNITED STATES OF AMERICA.

vs.

S. R. PRICE,

Defendant.

Subpoena to T. B. Jackson.

The President of the United States of America, to
T. B. Jackson, Greeting:

You are hereby required that all and singular business and excuses being set aside, you appear and attend before the Honorable L. R. Wilfley, Judge of the United States Court for China, at a session of said

Court to be held in the Courtroom of said Court at the American Consulate, 36 Whangpoo Road, Shanghai, China, on the twenty-fifth day of February, A. D., 1907, at ten o'clock A. M., then and there to testify in the above-named cause now pending in said Court on the part of the prosecution in.

And for failure to attend as above required you will be deemed guilty of contempt of court, and will be liable to pay to the party aggrieved all loss and damage thereby.

Witness, the Honorable L. R. WILFLEY, Judge of the United States Court for China, this twenty-third day of February, 1907.

[Seal] (Signed) F. E. HINCKLEY,
Clerk of Court.

UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Served on the within named T. B. Jackson, personally at the American Consulate at 10 o'clock A. M., on the 25th day of February, A. D. 1907.

(Signed) JOHN M. DARRAH
Deputy United States Marshal.

[Endorsed]: Subpoena. T. B. Jackson. February 25, 1907. Filed this February 25, 1907. F.

E. Hinckley, Clerk of Court. Original Paper No. 25.

Tuesday, January 8th, 1907.

UNITED STATES OF AMERICA.

vs.

S. R. PRICE.

Proposed Amendment of Minutes of January 8, 1907.

ASSAULT.

Counsel for defendant filed a plea in bar setting forth that defendant had been tried by a court of competent jurisdiction for the same offense and had been duly acquitted. Upon the hearing of said plea in bar counsel for defendant called the attention of the Court to the fact that no traverse or demurrer had been filed to the defendant's plea in bar, and the Court asked the District Attorney if there was any traverse or demurrer filed to said plea in bar, and the District Attorney replied that there was not, since there was no dispute about the allegation of fact contained in the said plea. The Court ruled that it was unnecessary to file any answer to said plea in bar, to which ruling the defendant then and there excepted. Counsel for defendant then offered oral testimony in support of the record of the former trial, the same being incomplete, and also offered oral testimony by witnesses present in court in sup-

port of the facts set forth in said plea in bar; the Court overruled said offers because the allegations of fact contained in the plea had been admitted, to which ruling of the Court the defendant then and there duly excepted. Argument then followed between counsel for defendant and the district attorney on behalf of the United States.

The Court overruled said plea in bar, to which ruling defendant then and there duly excepted.

(Signed) G. D. MUSSO.

[Endorsed]: Musso's Draft of Proposed Amendment of Minutes of January 8, 1907. Filed this February 12, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 26.

In the United States Court for China.

Term at Shanghai.

January-February, 1907.

Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Order (Unsigned) Allowing Appeal.

On motion of G. D. Musso, attorney for the defendant, it is ordered that an appeal from the final judgment of this Court in the above-entitled action to the United States Circuit Court of Appeals of the Ninth Judicial Circuit, be, and the same is hereby, allowed;

And it is further ordered that the bond for costs be, and the same is hereby, fixed in the sum of five hundred (\$500.00) gold currency of the United States.

_____,
Judge of the United States Court for China.

[Endorsed]: Order Allowing Appeal. Filed this February 26, 1907. F. E. Hinekley, Clerk of Court. Original Paper No. 27.

Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE.

Affidavit of T. B. Jackson.

T. B. Jackson, being duly sworn, says that he is an American citizen, resident in Shanghai, China, and is an experienced stenographer and court reporter.

That he was employed by Messrs. Andrews & Brooks, attorneys at law, in the case of the United States vs. S. R. Price, to report said case, and did in fact attend the hearings of said case and made a stenographical report of the proceedings therein, and later furnished the said United States Court with a sworn copy thereof.

That upon the eighteenth day of January, 1907, the undersigned prepared a transcript of the proceedings in said case, from which transcript were omitted the written decision of the Court in said case, and the reasons stated by the Court for denying bail in this case. Said omissions were made on instructions of either Mr. Andrews or Mr. Brooks.

(Signed) T. B. JACKSON.

Subscribed and sworn to before me this twenty-fifth day of February, A. D. 1907.

(Signed) F. E. HINCKLEY,

Clerk of the United States Court for China.

[Endorsed]: Affidavit of T. B. Jackson. Filed this February 25, 1907. F. E. Hinckley, Clerk of Court. Original Paper No. 28.

In the United States Court for China, at Shanghai.

Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Proceedings had February 25, 1907, on **Motion to Release S. R. Price on Bail.**

His HONOR.—Mr. Musso, you desire to call up the matter about which you were speaking?

Mr. MUSSO.—About the case of the United States vs. S. R. Price; yes, your Honor.

His HONOR.—The Court will hear your petition this morning.

Mr. MUSSO.—If your Honor pleases, I move this Court for the release of S. R. Price, who is detained in custody in pursuance of the judgment rendered by this Court on the 18th of January last. The ground for my application is an order entered by the District Court of Appeal in California, admitting the said S. R. Price to bail in the sum of four thousand gold dollars.

His HONOR.—Have you a copy of your bond?

Mr. MUSSO.—I filed the bond with the Court, and a certified check for the amount of \$4,000 gold.

His HONOR.—Is this the copy you filed?

Mr. MUSSO.—Yes, there is one point I would call to the attention of your Honor, a slight clerical error; instead of “in lieu of which” it should read “in lieu of sureties.”

His HONOR.—Very well, the change may be made. The Court has received official information that the United States Court of Appeals for the Ninth Judicial District has the release of S. R. Price on bail pending appeal, in the sum of four thousand dollars, United States Currency. The order of the Court has not yet reached Shanghai, but the Court has satisfied itself that the order has been issued, and in compliance therewith, it appearing that S. R. Price has filed with the Clerk of the Court the sum of \$4,000 in view that S. R. Price has complied with the provisions of the order, the Marshal is hereby directed to release Mr. Price forthwith.

Mr. BASSETT.—I would suggest the change be made by Mr. Price where he signed that bond.

His HONOR.—Yes, the change may be made. Mr. Clerk, has the record in the case of the United States vs. Price been forwarded to the Clerk of the 9th District?

CLERK OF COURT.—No, your Honor.

His HONOR.—Have you furnished a certified copy of the record to anyone?

CLERK OF COURT.—No, I have not furnished a certified copy to anyone.

His HONOR.—The record should be forwarded at the earliest possible date. Has the record been perfected on the appeal?

CLERK OF COURT.—The taking of Appeal was filed on this last Saturday the 23d of February, and I understand that with the filing of that petition the Appeal is perfected.

His HONOR.—And you will forward the record at an early date?

CLERK OF COURT.—The record will be ready to forward on the Coptic on the 26th inst.

Mr. BASSETT.—I have an affidavit I want to file in this case, Affidavit of T. B. Jackson. (Reads affidavit.) I want this in for the purpose, Your Honor, of being able to raise in the Appellate Court the question of the right of this Court to admit or deny bail, and to have again considered that question.

Mr. MUSSO.—If your Honor pleases, I should like to object against this affidavit going into the evidence on two grounds: First, that it is irrelevant. The second is that the stenographer in the case was

acting against his duty as an agent to divulge the instructions he might have received. What does not appear in the record should not be sent to the Court of Appeal.

Mr. BASSETT.—If the Court pleases, I understand that the record which the Court of Appeal has before them is the record furnished by Mr. Jackson in this matter.

Mr. MUSSO.—Besides the transcript of evidence given by Mr. Jackson, the newspapers containing the report of the case, supplemented by affidavits, have been produced before the Court of Appeal. In the record of evidence before the Court of Appeal, there is a declaration by Mr. Jackson. He simply stated, “I hereby certify that the above is a true and complete and correct record of the proceedings in this case, except the written decision of the Court and the reasons given by the Judge for refusing to grant bail on appeal.” The reasons were given by the newspapers published in Shanghai. I submit that Mr. Jackson was not entitled to divulge the instructions received, as he was acting as a private stenographer.

Mr. BASSETT.—He was sworn at their request, sworn as to the record of the proceedings.

Mr. MUSSO.—He was not sworn. I insisted upon his being sworn but for some reason he was not

sworn. After making the record as employed, he afterwards swore to the notes taken by him as correct. He was not sworn; was engaged privately.

His HONOR.—The records of this Court show no record of the Price case forwarded to the Appellate Court, and that there has been no certified copy of the record of the Court forwarded to the Appellate Court. It appears from a statement made by counsel for the accused this morning that the record that the Appellate Court had before it in passing upon the motion in question, was the record furnished by Mr. Jackson. That record shows that in the transcript of Mr. Jackson's notes the decision of the Court and the reasons of the Court for denying Mr. Price bail in this case were not transmitted to the Appellate Court, and the affidavit shows the reason why such written opinion of the Court was not transmitted; because he had received orders from either Mr. Andrews or Mr. Brooks.

In view of the foregoing facts, the affidavit will be admitted as record. The procedure in the United States Courts of America as provided by Congress does not permit of the action taken by this Court in the Price case. On the other hand it would appear from the acts of Congress and the regulations made pursuant thereto which are in force in China, that there is warrant for the ruling of the Court in refusing bail of Mr. Price in this case. It is not certain

that the Appellate Court had before it all of the facts and the reasons for the ruling of the Court in this case. It is possible that it did, but it is very important matter, and not only the fact of the ruling but the grounds upon which the ruling was based ought to be called to the attention of the Court.

Mr. MUSSO.—I would like to make exception to the affidavit of Mr. Jackson being admitted as evidence.

His HONOR.—Exception is noted.

[Endorsed]: Proceedings February 25, 1907, on motion to release on bail. Filed this February 25, 1907. (Signed) F. E. Hinckley, Clerk of Court. Original paper No. 29.

Excerpts From Minutes.

United States Court for China.

(Excerpt from Minutes.)

Wednesday, January 2, 1907.

Present: The Honorable L. R. WILFLEY, Judge.
1907.

January 2,

10 A. M. Criminal Action No. 3. United States of America versus S. R. Price: assault with a dangerous weapon. This case came upon certification from the United

States Consular Court at Shanghai, James L. Rodgers, Consul General, Acting Judicially. The defendant, being present, responded when the case called and stated that he had not yet retained counsel. The Court set arraignment and trial for Saturday, January fifth, 1907, at ten o'clock, forenoon.

Saturday, January 5, 1907.

1907.

January 5,

10 A. M. In the absence of the Honorable L. R. Wilfley, Judge, and under notice so to do, the Clerk of Court adjourned the Court to Monday, January seventh, 1907, at ten o'clock forenoon.

Monday, January 7, 1907.

1907.

January 7,

10 A. M. In the absence of the Honorable L. R. Wilfley, Judge, and under notice so to do, the Clerk of Court adjourned the Court to Tuesday, January eighth, 1907, at ten o'clock, forenoon.

Tuesday, January 8, 1907.

Present: The Honorable L. R. WILFLEY, Judge.

1907.

January 8,

10 A. M. Criminal Action No. 3: United States of America versus S. R. Price, assault with a dangerous weapon. Counsel for defendant introduced a plea in bar to the jurisdiction on grounds of former jeopardy.

2 P. M. After hearing argument of counsel on the plea in bar and after fully considering the same, the Court ruled that it was inadmissible. Counsel for the defense took formal exception. The Court set trial of this action on Tuesday, January fifteenth, 1907, at ten o'clock, forenoon.

Tuesday, January 15, 1907.

Present: The Honorable L. R. WILFLEY, Judge.

1907.

January 15,

10 A. M. Criminal Action No. 3: United States of America versus S. R. Price; assault with a dangerous weapon. The defendant

was arraigned. He pleaded not guilty. Yates Wong was sworn as an interpreter. The following witnesses were sworn and their testimony taken: Adolph Jovansen, Ah Dow, Tung Yang, Chang Souy Sun, John Gibson, William Morey and Fo Sun. When counsel for defendant put the question to William Morey whether Adolph Jovansen had recently entered a complaint at a municipal police station against an unknown person carrying a bomb and other dangerous weapons, objection was taken by counsel for the prosecution. The Court sustained the objection and counsel for the defense took formal exception to this ruling.

2:30 P. M. After recess the following witnesses were sworn and their testimony taken: Stewart R. Price who was the defendant, Frederick Davies, John W. Winkelbach and Amerigo Lauro; and G. Passeri was sworn as interpreter. The affidavit of Mrs. Anna Stewart of Niuchwang, China, was introduced in evidence. Thereupon counsel agreed to submit the case without argument. The Court reserved judgment and adjourned

to Wednesday, January sixteenth, 1907,
at ten o'clock, forenoon.

Wednesday, January 16, 1907.

Present: The Honorable L. R. WILFLEY, Judge.
1907.

January 16,

10 A. M. Criminal Action No. 3: United States of
America versus S. R. Price: assault with
a dangerous weapon. The Court an-
nounced that the defendant was found
guilty. Judgment would be pronounced
and the defendant sentenced on Friday,
January eighteenth, 1907, at ten o'clock,
forenoon. Counsel for defense took ex-
ception to the finding and gave notice
of appeal.

Friday, January 18, 1907.

Present: The Honorable L. R. WILFLEY, Judge.
1907.

January 18,

10 A. M. Criminal Action No. 3: United States of
America versus S. R. Price; assault with
a dangerous weapon. The Court pro-
nounced judgment as follows:

JUDGMENT.

(Here insert the judgment.)

Thereupon counsel for the defense took exception
alleging that the defendant had not been given oppor-

tunity before the pronouncing of the sentence to give reason, if any he had, why the sentence should not be pronounced; and said counsel gave notice that appeal would be taken and that written exceptions would be filed. The Court stated that appeal would be granted upon the filing of exceptions and the furnishing of the proper bond. Under rule of court as given below, the Court declined to admit the prisoner to bail pending appeal, and directed the Marshal to take him into custody.

Monday, February 11, 1907.

Present: The Honorable L. R. WILFLEY, Judge.
1907.

Feb. 11,

9 A. M. Criminal Action No. 3: United States versus S. R. Price; assault with a dangerous weapon. Counsel for defendant entered a motion to amend the record, namely, the minutes of Tuesday, January 8, 1907, so as to show, among other particulars stated in the motion, that counsel for the prosecution had filed no traverse to the plea in bar. The Court refused to grant the motion in the form presented.

Monday, February 18, 1907.

Present: The Honorable L. R. WILFLEY, Judge.
1907.

Feb. 18,

10 A. M. Criminal Action No. 3: United States versus S. R. Price; assault with a dangerous weapon. Counsel for defendant entered a motion to grant an appeal.

The Court did not at this time grant an appeal, but said that an appeal would be granted upon filing a proper bill of exceptions and a bond of five hundred (\$500.00) dollars gold for costs.

Monday, February 25, 1907.

Present: The Honorable L. R. WILFLEY, Judge.
1907.

Feb. 25,

10 A. M. The following proceedings were had: Criminal Action No. 3: United States versus S. R. Price; assault with a dangerous weapon. Motion for admitting S. R. Price to bail in the sum of four thousand (\$4000) dollars gold. The Court stated that official information had been received by telegraph indicating the action taken in the Circuit Court of Appeals of the Ninth Judicial Circuit. Upon said S. R. Price entering into sufficient bond approved by the Court in the

sum of four thousand (\$4000) dollars gold conditioned that the said S. R. Price appear in the United States Court for China to answer judgment after determination of appeal, as provided and required in an order entered in the Circuit Court of Appeals of the Ninth Judicial Circuit at San Francisco, California, on the twenty-first day of February, 1907; and upon correcting the document entitled "Undertaking on Appeal," filed by counsel for the defendant on the twenty-third day of February, 1907, by changing the word "which" to "sureties," the said undertaking on appeal was approved by the Court as being in conformity with the requirements of the order entered in the Circuit Court of Appeals as indicated in the telegram of the twenty-first of February, 1907, from F. D. Monekton, Clerk of that Court, and the Court directed J. M. Darrah, United States Deputy Marshal in charge, to release the said S. R. Price from custody.

Thereupon the Court calling upon the Clerk of the Court, inquired whether he had forwarded a transcript of the

record in the action of United States vs. S. R. Price to the Clerk of Circuit Court of Appeals of the Ninth Judicial Circuit; and to this the Clerk replied no. The Court asked, "Have you furnished a certified copy to anyone?" and to this the Clerk replied that he had not. The Court then said, "Has the appeal been perfected?" and the Clerk answered "The undertaking on appeal was filed only this last Saturday, February 23d, and with the filing of that undertaking, if approved by the Court, I understand the appeal will have been perfected." The Court said, "You will forward the record at an early date?" and the Clerk replied, "I will forward it on the 'Coptic' on the 26th instant."

The Court then heard A. Bassett, United States District Attorney, who stated that T. B. Jackson, the private stenographer who took notes of the testimony and proceedings in this action, had made his affidavit relating to certain omissions from his transcribed notes, which omissions were made under instructions of Messrs. Lorrin Andrews

and F. M. Brooks, therein acting as counsel for S. R. Price, the defendant. And said affidavit was then presented in open Court and filed with the Clerk of the Court.

The Court then heard G. D. Musso, of counsel for S. R. Price, who moved the Court not to permit aforesaid affidavit of T. B. Jackson to be included in the record.

This motion was overruled and the affidavit was ordered admitted of record.

To this order admitting the affidavit of record, counsel for defense took formal exception.

(End of excerpts from the minutes.)

United States Court for China.

Criminal Action, No. 3.

Register Criminal Actions, page 5.

UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Schedule of Clerk's Earnings.

1906.

Dec. 28. On certification from the United States
 Consular Court at Shanghai.

	Earnings from the United States	Earnings from the Defendant
July 25. Docket, 1.00; Hearing, 5.00	\$ 6.00	
Complaint of A. Jovansen, drawing 1 fol. .15, oath .10, seal .20, filing .10...	.55	
Complaint of John Gibson, do.....	.55	
Complaint of J. E. Far- rell, do .....	.55	
Warrant to arrest, draw- ing 1 fol. .15, seal .20, issuing 1.50, filing .10..	1.95	
Subpoena G. D. Musso, is- suing .25, filing .10....	.35	
Subpoena A. Lauro, issu- ing .25, filing .10.....	.35	
Subpoena Chow Lin Lou, issuing .25, filing .10....	.35	
Order for hearing, issuing .25, filing .10.....	.35	

	Record of proceedings 1		
	fol.....	.15	
	Bail bond, filing.....	.10	
Dec. 28.	Certified copy docket record, U. S. Consular Court filing .....	.10	
Dec. 29.	Information, oath .10, filing .10 .....	.20	
			\$11.55
			Earnings from the United States.
			Earnings from the Defendant
1907.	Carried forward	11.55	
Jan. 15.	Defendant's plea in bar oath, 10, filing .10.....		.20
Jan. 8.	Docket	3.00	
Jan. 8.	Hearing	15.00	
	Subpoena F. M. Brooks .25, seal .20, filing .10...		.55
	Subpoena F. Davies (British) .25, filing .10.....		.35
	Subpoena A. Lauro (Italian) .25, filing .10....		.35
	Subpoena J. W. Winklebach .25, seal .20, filing .10 .....		.55

Jan. 15.	Defendant's Exception	
	Jan. 8, filing .10.....	.10
	Affidavit of Anna Stewart,	
	filing .10 .....	.10
	Affidavit of stipulation, fil-	
	ing .10.....	.10
	Bond of F. M. Brooks and	
	B. F. Colvin, oath .20,	
	seal .20, filing .10.....	.50
Jan. 16.	Testimony, oath .10, seal	
	.20, filing .10.....	.40
	Copy of testimony, ac-	
	knowledgment of clerk.	.25
Jan. 18.	Cancellation bond, F. M.	
	Brooks and B. F. Col-	
	vin, filing .10 .....	.10
	Judgment, filing.....	.10
	Final commitment, draw-	
	ing 2 fol. .25, seal .20, fil-	
	ing .10 .....	.55
	Oaths administered to wit-	
	nesses for prosecution:	
	Jovansen .10, Yates	
	Wong (interpreter) .10,	
	Ah Dow .10, Tong Yang	
	.10, Chang Loui Sun .10,	
	John Gibson .10, Will-	
	iam Morey .10, Foh Sun	
	.10 .....	.80

	Appeals, 75 words, filing	
	.10 . . . . .	.10
Feb. 25.	Entering judgment, 21 fol.	
	at .15	3.15
	Entering order canceling	
	bond, 1 fol. .15, filing	
	.10 . . . . .	.25
	Subpoena T. B. Jackson	
	.25, seal .20, filing .10 . . .	.55
Feb. 24.	Cablegram F. D. Monck-	
	ton, C. C. A., to F. E.	
	Hinckley, Clerk, filing . .	.10
Feb. 22.	Cablegram F. D. Monck-	
	C. C. A., to U. S. Court,	
	China, filing .10 . . . . .	.10
Feb. 12.	Redraft of proposed	
	amendment to proceed-	
	ings, Jan. 8/07, filing	
	. . . . .	.10
Feb. 26.	Order allowing appeal, en-	
	tering 1 fol. .15, filing	
	.10 . . . . .	.25
Feb. 25.	Affidavit T. B. Jackson	
	oath .10, filing .10 . . . . .	.20
Feb. 26.	Certificate to transcript, 2	
	fol. .30, seal .20 . . . . .	.50
Feb. 26.	Marshal's certificate of	
	costs, filing .10 . . . . .	.10

Feb. 26.	Costs of preparing transcript of record, paper, 1.25, 315 folios at .10	32.75
Feb. 26.	Costs of sending transcript of record	1.50
Feb. 26.	Oath, Marshal, costs and fees . . . . .	.10
		<hr/>
		\$35.55 \$39.85

United States Court for China, at Shanghai.

Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Order Amending Record.

On reading and considering the motion of counsel for the defendant in the above-entitled cause where-in he moves the Court to cause the record to be amended, it is hereby ordered and adjudged that the said record be amended as follows:

Tuesday, January 8, 1907.

Present: the Honorable L. R. WILFLEY, Judge.

Criminal action No. 3: United States of America versus S. R. Price; assault with a dangerous weapon.

Counsel for defendant introduced a plea in bar to the jurisdiction on grounds of former jeopardy.

Resuming after recess:

During the hearing of argument on said plea in bar, counsel for defendant submitted to the Court that no traverse or demurrer to said plea in bar had been filed. Counsel for the prosecution then stated that no traverse or demurrer had been filed because there was no dispute about the allegations of fact contained in the said plea. Thereupon the Court ruled that it was unnecessary to file any answer to said plea in bar, and to this ruling the defendant took formal exception. Counsel for defendant then offered to produce testimony regarding the proceedings in an action entitled *United States vs. Price* on July 25th, 1906, in the United States Consular Court at Shanghai, China. The Court refused to hear said testimony, for the reason that the allegations of fact contained in the aforesaid plea in bar had been admitted by counsel for the prosecution; and to this ruling of the Court counsel for the defendant thereupon made formal exception.

After hearing argument of counsel on the plea in bar, and after fully considering same, the Court overruled said plea in bar. Counsel for the defense took formal exception. The Court set hearing of this ac-

tion on Tuesday, January 15th, 1907 at ten o'clock forenoon.

(Signed) L. R. WILFLEY,
Judge.

United States Court for China.

Criminal Action No. 3.

UNITED STATES OF AMERICA

vs.

S. R. PRICE.

Defendant.

Schedule of Marshal's Fees and Costs.

Earnings Earnings
from the from the
United Defendant.
States.

1906.

Dec. 28. On certification from
United States Consular
Court at Shanghai.

July 25. Warrant of arrest. \$ 2.00

July 25. Subpoena—Musso75

July 25. Subpoena—Lauro75

July 25. Subpoena—Chow75

July 25. Bail Bond—Brooks and
Virgil 1.00

1907.

Jan. 8. Subpoena—Brooks .50; re-
turn .25; traveling .15.90

Jan. 15.	Subpoena — Winklebach .50; return .25; travel- ing .15 .....	.90
Jan. 15.	Interpreter Wong, attend- ance one day.....	3.00
Jan. 15.	Interpreter Passeri, at- tendance one day.....	3.00
Jan. 15.	7 witnesses, attendance— Ah Dow, Tong Yang, Chang Loui Sun, Gibson, Morey, Foh Sun, Jovan- sen, at 1.50 each.....	10.50
Jan. 15.	4 witnesses, attendance— Price, Davies, Lauro. Winklebach, at 1.50 each.	6.00
Jan. 18.	Final commitment.....	2.00
Feb. 25.	Subpoena — Jackson . 50; return .25.....	.75
Feb. 25.	Bond on Appeal.....	1.00
		\$18.25
		\$15.05

The items in the above memorandum contained are correct, and they constitute the full record of fees and costs of the Marshal in the above-entitled cause.

HUBERT O'BRIEN,
Marshal.

By John M. Darrah,
Deputy Marshal.

Subscribed and sworn to before me this twenty-sixth day of February, 1907.

F. E. HINCKLEY,
Clerk of Court.

United States Court for China, at Shanghai.

Criminal Action No. 3.

THE UNITED STATES OF AMERICA

vs.

S. R. PRICE,

Defendant.

Clerk's Certificate to Record.

I, F. E. Hinckley, Clerk of the United States Court for China, having before me the motion of appeal of S. R. Price, defendant in an action in said Court entitled Criminal Action No. 3: United States of America vs. S. R. Price, appealing from the final judgment of the said United States Court for China to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, do hereby make return to the said motion of appeal and certify that the hereto affixed transcript of record, numbered in pages from 1 to 155, inclusive, bound under the seal of said United States Court for China hereto affixed, is a true and correct copy of the whole record of all pleadings, filed and proceedings had and entered in the aforesaid Criminal Action No. 3, United States

of America vs. S. R. Price, as the same appear in the original record of the said United States Court for China.

The cost of said transcript of record is \$32.75 which amount was paid by S. R. Price, defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Court for China at the City of Shanghai, China, this twenty-sixth day of February, 1907.

[Seal]

F. E. HINCKLEY,

Clerk of the United States Court for China.

[Endorsed]: No. 1429. United States Circuit Court of Appeals for the Ninth Circuit. S. R. Price, Appellant, vs. United States of America, Appellee. Upon Appeal from the United States Court for China. Transcript of Record. Upon Return to Mandate of the United States Circuit Court of Appeals for the Ninth Circuit.

Filed March 23, 1907.

F. D. MONCKTON,

Clerk.

AMERICAN CONSULATE-GENERAL, TIENT-SIN, CHINA.

Affidavit of F. E. Hinckley.

F. E. Hinckley, being duly sworn, deposes and says: That he is and has been Clerk of the United States Court for China at all times during the pendency before said court of the action entitled United States of America versus S. R. Price.

That he has received a certified copy of an order of Court issuing from the United States Circuit Court of Appeals of the Ninth Judicial Circuit, a portion of which order reads as follows:

“On reading the petitions and affidavits of Lorrin Andrews and Bert Schlesinger, herein filed, it appearing therefrom that the Clerk of said United States Court for China refused and still refuses to furnish or to certify or transmit to this Court a transcript of the papers, proceedings and records in the said cause;”

That said statement appearing in said petitions and affidavits of Lorrin Andrews and Bert Schlesinger “that the Clerk of said United States Court for China refused and still refuses to furnish or to certify or transmit to this Court a transcript of the papers, proceedings and records in the said cause,” is a statement utterly false and without foundation of fact;

That, contrary to said false statement contained in said petitions and affidavits, no application was made to the affiant herein for a transcript of the record in said cause by any person at any time prior to the twenty-third day of February, 1907, when said appeal was perfected and the bond for costs on appeal was filed with the Court.

That immediately upon the filing of said bond a transcript of the record was prepared and the same was transmitted on the twenty-sixth day of February, 1907.

F. E. HINCKLEY.

Subscribed and sworn to before me at the city of Tientsin, China, this fourth day of April, 1907.

[Seal]

JAMES W. RAGSDALE,

American Consul-General.

No fee.

[Endorsed]: No. 1429. United States Circuit Court of Appeals for the Ninth Circuit. S. R. Price, Plaintiff in Error, vs. United States of America, Defendant in Error. Affidavit of F. E. Hinckley. Filed May 2, 1907. F. D. Monckton, Clerk.